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Thursday
October 17, 1991

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Contents

Federal Register
Vol. 56, No. 201
Thursday, October 17, 1991

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6356 51965
6357 51967
6358 51969

7 CFR
245 52120
905 51971
Proposed Rules:
319 52004
360 52005

9 CFR
53 51973
72 51974
112 51975
Proposed Rules:
91 52007

12 CFR
1680 52160

21 CFR
Proposed Rules:
333 52008

26 CFR
1 52120
602 52120
Proposed Rules:
1 52120

32 CFR
293 51976
312 51976

33 CFR
100 51980
165 51980

39 CFR
111 51981

40 CFR
52 51982
Proposed Rules:
52 (3 documents) 52008–52011
88 52013

42 CFR
417 51984

43 CFR
Public Land Orders:
6891 51986

46 CFR
30 52122
151 52122
153 52122
197 52122
580 51987
581 51987
583 51987

49 CFR
71 51997

Federal Register
Vol. 56, No. 201
Thursday, October 17, 1991

Presidential Documents

Title 3—

The President

Proclamation 6356 of October 11, 1991

World Food Day, 1991 and 1992

By the President of the United States of America

A Proclamation

At a time when America traditionally celebrates the promise of a rich autumn harvest, we do well to remember that hunger and malnutrition are a painful reality for millions of people around the world today. The situation is particularly tragic among infants and children in less developed countries. Each year millions die of starvation or disease; many others are permanently disabled as a result of chronic vitamin deficiencies. Recognizing the threat that hunger poses to human life and to the stability of nations, the United States is participating in the 11th annual observance of World Food Day.

The American people have long been providing generous humanitarian assistance to the hungry and less fortunate. This year alone, the United States will give more than 8 million metric tons of food, worth nearly $1.9 billion, to hungry people in other countries. In addition to sharing our Nation's abundant agricultural resources, we will also continue to share our technical knowledge and expertise, helping needy peoples to achieve greater food production and economic development.

Although we have taken important strides in the campaign against hunger, we still have much more to accomplish. Just as there is no single cause behind this large and complex problem, there is no single solution. For example, the worst reports of hunger and starvation often come from countries that have been racked by years of political upheaval and civil war. Indeed, in countries such as the Sudan, Ethiopia, and Mozambique, famine has not been so much the result of adverse weather conditions and crop shortages as of strife-related barriers to the distribution of food. The needless suffering of millions of innocent men, women, and children compels us to persevere in the quest for lasting peace and security.

We must also continue to promote private enterprise and free markets as catalysts for economic development and technological progress among nations. In many countries, centralized government planning has destroyed incentives for farmers and stifled agricultural production, leading to widespread poverty and hunger. Elsewhere—even where crops are abundant—excessive trade barriers prevent farmers from selling their goods on world markets, thereby limiting economic opportunity and growth. That is why we must continue working to open the world's markets and to liberalize trade through negotiations such as the Uruguay Round of the General Agreement on Tariffs and Trade.

Another threat to the future of some developing nations is the systematic degradation of the natural resource base on which sustainable agriculture depends. Forests are being destroyed at a rapid rate and soils depleted through subsequent erosion. Failure to protect the environment poses a significant long-term threat to the ability of those countries to feed their inhabitants.

The observance of World Food Day reminds us that the chilling specter of hunger and starvation is often nothing less than the lengthening shadow of illiteracy, poverty, government repression, and civil unrest. On this occasion, as we renew our commitment to feeding the hungry, let us also reaffirm our

determination to find the lasting answers that go hand in hand with peace, opportunity, and education.

The Congress, by House Joint Resolution 230, has designated October 16, 1991, and October 16, 1992, as "World Food Day" and has authorized and requested the President to issue a proclamation in observance of these days.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 16, 1991, and October 16, 1992, as World Food Day. I call on all Americans to observe these days with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91-25204
Filed 10-15-91; 2:51 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6357 of October 15, 1991

National Law Enforcement Memorial Dedication Day, 1991

By the President of the United States of America

A Proclamation

Each and every day of the year—and at every hour of the day—our Nation's law enforcement officers walk the thin blue line, putting themselves in harm's way to protect the lives and the property of their fellow Americans. Statistics provided by the Department of Justice underscore the risks and sacrifices that they accept for our sake: on average, one officer dies in the line of duty every 57 hours; that is, 150 law enforcement personnel each year. Another 20,000 are injured, and some 60,000 are assaulted. Because such numbers, like news headlines, can too often belie the reality of human suffering, we must always remember that each of these officers is a beloved son or daughter, a husband or wife, a sister or brother, a mother or father, or a friend.

This year, on October 15, the National Law Enforcement Officers Memorial will be dedicated in Washington, D.C., to honor these American heroes. The names of those who have made the ultimate sacrifice in service to our country are inscribed along the Memorial's "Pathway of Remembrance." They include names such as that of U.S. Marshal Robert Forsyth, who, in 1794, became the first American law enforcement officer to die in the line of duty. He was killed while serving an arrest warrant.

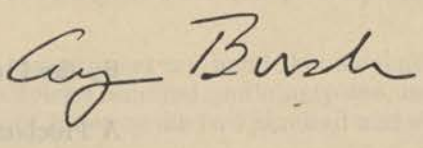
The Memorial also contains the names of Hammond, Indiana, Police Officer Donald P. Cook, who was shot and killed in January 1947 after serving only 7 days on the job; New Salem, North Dakota, Police Chief Ed Memby, who was shot and killed in July 1953 by a man who refused to pay a 1 cent sales tax on a soda; U.S. Marshal Samuel Enoch Vaugh, the father of 13 children, who was shot and killed by a prisoner in August 1953; and Julie Y. Cross, the first female Secret Service casualty, who was shot and killed during a stakeout in October 1979. These, of course, are just a few of the brave and selfless individuals to whom our National Law Enforcement Officers Memorial has been dedicated. We also remember with solemn pride and gratitude the hundreds of others who have gone before them, as well as those who have since joined their ranks.

Years from now, the National Law Enforcement Officers Memorial will continue to remind visitors of the debt that we owe to those who have died in the service of public safety and justice. On this occasion, however, as we honor the fallen, let us also remember the heroic individuals who, at this very moment, continue to wage our Nation's fight against crime. Let us pray for their well-being, and let us offer them our wholehearted cooperation and support.

To heighten public awareness of the risks and the responsibilities that law enforcement officers face each day, the Congress, by Senate Joint Resolution 107, has designated October 15, 1991, as "National Law Enforcement Memorial Dedication Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 15, 1991, as National Law Enforcement Memorial Dedication Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-25206
Filed 10-15-91; 3:02 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6358 of October 15, 1991

Country Music Month, 1991

By the President of the United States of America

A Proclamation

To listen to a country and western song is to hear the story of America set to music. It is a story of patriotism and hard work, a story of faith, opportunity, and achievement. Most of all, it is the story of a people whose love of freedom is equalled only by their love of life itself. During Country Music Month, we proudly celebrate this popular musical genre and the many talented composers and performers who bring it to our ears.

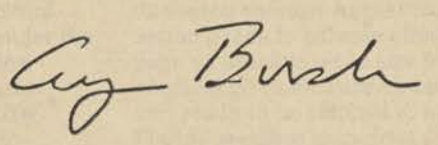
Country music is honest, good-natured music played with style and spirit. Like a favorite pair of faded blue jeans, it fits the way we live. Never out of fashion, always comfortable, country music has millions of fans in cities and towns across the United States—people of all ages and all walks of life. And whether they tap their toes to the lively sound of bluegrass and honky-tonk or hum along with the rhythm and blues, country music lovers share an appreciation of the simple and most important things in life: faith, family, and friendship.

Of course, while country music speaks from the heart of the American people, it has—like liberty itself—a great and universal appeal. Indeed, millions of people around the world can be counted among its fans. Maybe that is because country music crosses the barriers of culture and language, capturing all the joys, struggles, laughter, and heartache that are part of our daily lives. In any case, the growing popularity of country music is a tribute to generations of American composers, lyricists, singers, and musicians.

The Congress, by House Joint Resolution 305, has designated October 1991 as "Country Music Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 1991 as Country Music Month. I invite all Americans to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-25209
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Rules and Regulations

Federal Register
Vol. 56, No. 201
Thursday, October 17, 1991

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-91-431IR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Minimum Size Requirements for Red and White Seedless Grapefruit and Dancy Tangerines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This rule relaxes the minimum size requirement for red and white seedless grapefruit from 3$^{9}/_{16}$ inches to 3$^{5}/_{16}$ inches in diameter for the remainder of the 1991–92 shipping season. Under the current handling regulation, the minimum size requirement for red seedless grapefruit will increase from 3$^{5}/_{16}$ inches to 3$^{9}/_{16}$ inches on October 21, 1991. The minimum size requirement for white seedless grapefruit is currently 3$^{9}/_{16}$ inches. This rule also indefinitely relaxes the minimum size requirement for domestic shipments of Dancy tangerines to 2$^{9}/_{16}$ inches in diameter from the current 2$^{9}/_{16}$ inch requirement. This action is based on this season's current and prospective crop and market demand conditions, and the maturity and flavor levels of these citrus fruits.

EFFECTIVE DATE: October 11, 1991. Comments which are received by November 18, 1991 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456.

Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (committee), which administers the marketing order locally, met September 10, 1991, and unanimously recommended this action. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the marketing order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Section 905.306 of the regulations (7 CFR 905.306) in Table I of paragraph (a) specifies minimum grade and size requirements for grapefruit and tangerines grown in Florida and shipped to the 48 contiguous States and the District of Columbia of the United States (the domestic market).

This action relaxes the minimum size requirement for domestic shipments of Florida red seedless grapefruit to size 56 (3$^{5}/_{16}$ inches in diameter) from size 48 (3$^{9}/_{16}$ inches in diameter) through October 25, 1992. Unless relaxed, the minimum size would increase to size 48 (3$^{9}/_{16}$ inches in diameter) on October 21, 1991, under the current handling regulation. This action will enable handlers to ship size 56 red seedless grapefruit for the entire 1991–92 season.

This action also relaxes the minimum size requirements for domestic shipments of Florida white seedless grapefruit to size 56 (3$^{5}/_{16}$ inches in diameter) from size 48 (3$^{9}/_{16}$ inches in diameter) for the remainder of the 1991–92 season through August 16, 1992. This action needs to become effective as soon as possible since size 56 white seedless grapefruit are already mature and ready to be shipped to market. The Florida seedless grapefruit shipping season normally begins in September and continues until the following July.

In addition, this action relaxes the minimum size requirement for domestic shipments of Florida Dancy tangerines to size 210 (2$^{9}/_{16}$ inches in diameter)

from size 176 (2 6/16 inches). This action needs to become effective by mid-October when Dancy tangerine shipments are expected to begin this year. Dancy tangerine shipments each season normally begin about the first of November, peak in December, and end the following March.

The committee reports that the Florida citrus season is much earlier than normal this year and recommended these relaxations based on its assessment of maturity, flavor level, and size composition of this season's Florida seedless grapefruit and Dancy tangerine crops. This action follows the committee's practice of prior years of recommending reduced minimum size requirements for these fruits once they reach acceptable levels of flavor and maturity for the fresh market. The committee anticipates that the demand will be good for size 56 seedless grapefruit and size 210 Dancy tangerines this season, and that the fruit will meet consumer acceptance.

This action is designed to enable Florida citrus shippers to ship sizes of fruit to the domestic market which are consistent with the current and anticipated demand in those markets during the 1991–92 season, and to maximize shipments to fresh market channels. The minimum size requirements are designed to provide fresh markets with fruit of acceptable size and maturity, thereby maintaining consumer confidence in fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is expected to increase returns to Florida citrus growers.

The minimum grade and size requirements in section 944.106 for grapefruit imported into the United States have been suspended since March 11, 1991. The U.S. Trade Representative (USTR) was notified that we contemplated reinstating those requirements upon USTR concurrence. Since this action changes the size requirements for Florida grapefruit, we plan to notify the USTR that we contemplate making similar changes in the grapefruit import requirements when they are reinstated.

Under the marketing order for Florida citrus, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the committee's and the Department's appraisal of the need to make the size relaxations hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it would allow Florida citrus handlers to ship those sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the relaxations set forth below will tend to effectuate the declared policy and the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes minimum size requirements currently in effect for Florida red and white seedless grapefruit and Dancy tangerines; (2) Florida grapefruit and tangerine handlers are aware of this action which was unanimously recommended by the committee at a public meeting and they will need no additional time to comply with the relaxed requirements; (3) shipment of the 1991–92 season Florida grapefruit crop is currently in progress and the Florida Dancy tangerine crop is expected to begin by mid-October this season; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 905.306 is amended by revising the entries in Table 1 of paragraph (a) for "seedless, red grapefruit"; "seedless, except red grapefruit"; and "tangerines, Dancy" to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo regulation.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (Inches)
(1)	(2)	(3)	(4)
* * * * * * *			
Grapefruit:			
* * * * * * *			
Seedless, red	10/11/91–10/25/92	Improved No. 2 (external) U.S. No. 1 (internal)	3–5/16
	On and after 10/26/92	Improved No. 2 (external) U.S. No. 1 (internal)	3–9/16
Seedless, except red	10/11/91–08/16/92	Improved No. 2 (external) U.S. No. 1 (internal)	3–5/16
	On and after 08/17/92	Improved No. 2 (external) U.S. No. 1 (internal)	3–5/16
* * * * * * *			
Tangerines:			
Dancy	On and after 10/11/91	U.S. No. 1	2–4/16
* * * * * * *			

Dated: October 11, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-25050 Filed 10-16-91; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 53

[Docket No. 89-026]

Foot-and-Mouth Disease, Pleuropneumonia, Rinderpest, and Certain Other Communicable Diseases of Livestock or Poultry

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations in 9 CFR part 53 by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: October 17, 1991.

FOR FURTHER INFORMATION CONTACT: Robert D. Whiting, Chief Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 765, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-8590.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 53 (referred to below as the regulations) provide for the payment of federal indemnity to owners for animals or materials that have been destroyed to prevent the introduction or spread of certain communicable animal diseases, including foot-and-mouth disease, pleuropneumonia, and rinderpest. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator for Veterinary Services, Animal and Plant Health Inspection Service (APHIS) was the official responsible for various decisions under these regulations. We are revising 9 CFR part 53 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

We are moving all references to "Deputy Administrator" and replacing them with references to "Administrator," and are removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." Also, we are removing the definitions of "Veterinary Services" and "Veterinary Services employee" and are adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS employee." We are also making nonsubstantive changes for clarity.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.).

List of Subjects in 9 CFR Part 53

Animal diseases, Exotic newcastle disease, Foot-and-mouth disease, Indemnity payments, Livestock and livestock products, Pleuropneumonia, Poultry and poultry products.

Accordingly, we are amending 9 CFR part 53 as follows:

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

1. The authority citation for part 53 is revised to read as follows:

Authority: 21 U.S.C. 111, 114, 114a; 7 CFR 2.17, 2.51, and 371.2(d).

§ 53.1 [Amended]

2. In § 53.1, paragraphs (c) and (d) are removed.

3. In § 53.1, all paragraph designations are removed; paragraphs (1) and (2) in the definition of "Disease" are redesignated as paragraphs (a) and (b) respectively; the definitions are arranged in alphabetical order; and definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS employee" are added in alphabetical order to read as follows:

§ 53.1 Definitions.

* * * * *

Administrator means the Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service means the Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

APHIS employee means any inspector or other individual employed by the agency who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

* * * * *

§§ 53.1, 53.4, 53.5, 53.6, 53.8 and 53.10 [Amended]

4. In addition to the amendments set forth above, in 9 CFR part 53 remove the

words "Deputy Administrator, Veterinary Services" and add, in their place, the word "Administrator" in the following places:

(a) Section 53.1, in the definition of *Inspector in charge*; and in the definition of *Disease*, newly redesignated paragraph (b);

(b) Sections 53.4 (a) and (b);

(c) Section 53.5(b);

(d) Section 53.6;

(e) Section 53.8; and

(f) Section 53.10(b).

§§ 53.1, 53.3, 53.4, 53.5 and 53.7 [Amended]

5. In addition the amendments set forth above, in 9 CFR part 53 remove the words "a Veterinary Services" and add, in their place, the words "an APHIS" in the following places:

(a) Section 53.1, definition of *Disease*, newly redesignated paragraph (a);

(b) Section 53.3(a), both times it appears;

(c) Section 53.4(b);

(d) Section 53.5(b); and

(e) Section 53.7.

§§ 53.1, 53.3, 53.8, and 53.9 [Amended]

6. In addition to the amendments set forth above, in 9 CFR part 53 remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 53.1, definition of *Inspector in charge*;

(b) Section 53.3(c), first sentence; and (d), first sentence;

(c) Section 53.8; and

(d) Section 53.9, first and second sentences.

Done in Washington, DC, this 4th day of October 1991.

Robert B. Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-25016 Filed 10-16-91; 8:45 am]

BILLING CODE 3410-34-01

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9 CFR Part 72

[Docket No. 89-062]

Texas (Splenetic) Fever in Cattle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations in 9 CFR part 72 by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing certain references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: October 17, 1991.

FOR FURTHER INFORMATION CONTACT: Granville H. Frye, Chief Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8711.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 72, (referred to below as the regulations) concern Texas (splenetic) fever in cattle. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service (APHIS) was the official responsible for various decisions under these regulations. We are revising 9 CFR part 72 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and are removing references to "Veterinary Services," except in addresses, and are replacing them with references to "Animal and Plant Health Inspection Service (APHIS)." We are also amending APHIS mailing addresses to reflect the current addresses.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR part 72 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 72

Animal diseases, Cattle, Quarantine, Splenetic fever, Texas fever, Ticks, Transportation.

Accordingly, we are amending 9 CFR part 72 as follows:

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

1. The authority citation for part 72 continues to read as follows:

Authority: 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 72.6 [Amended]

2. In § 72.6, footnote 3, remove the words "Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250", and add, in their place, the words "Administrator, c/o Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, United States Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782".

§ 72.13 [Amended]

3. In § 72.13, footnote 4, remove the words "U.S. Department of Agriculture, APHIS, Veterinary Services, and add, in their place, the words "Administrator, c/o Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, United States Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782".

4. In § 72.13, paragraph (c), second sentence, remove the words "the Veterinary Services" and add, in their place, the word "APHIS".

§§ 72.6, 72.7, 72.8, 72.9, 72.15, 72.16, and 72.20 [Amended]

5. In addition to the amendments set forth above, in 9 CFR part 72 remove the words "Deputy Administrator, Veterinary Services" and add, in their place, the words "Administrator, APHIS" in the following places:

(a) Section 72.6;

(b) Section 72.13(c), first sentence;

(c) Section 72.16, heading and first sentence;

(d) Section 72.18, paragraph (a), paragraph (b), and paragraph (c); and

(e) Section 72.20.

§ 72.24 [Amended]

6. In § 72.24, remove the words "Deputy Administrator, Veterinary

Services, Animal and Plant Health Inspection Service" and add, in their place, the words "Administrator, APHIS."

§§ 72.6, 72.7, 72.8, 72.9 and 72.15 [Amended]

7. In addition to the amendments set forth above, in 9 CFR part 72 remove the words "a Veterinary Service", and add, in their place, the words "an APHIS" in the following places:

(a) Section 72.6, both times they appear;

(b) Section 72.7, all three times they appear;

(c) Section 72.8;

(d) Section 72.9; and

(e) Section 72.15.

§§ 72.8, 72.9, 72.15, 72.17, and 72.24 [Amended]

8. In addition to the amendments set forth above, in 9 CFR part 72 remove the words "Veterinary Services" and add, in their place, the words "APHIS" in the following places:

(a) Section 72.8, heading;

(b) Section 72.9, heading and text;

(c) Section 72.15;

(d) Section 72.17, paragraph (a); and

(e) Section 72.24.

Done in Washington, DC, this 11th day of October 1991.

Robert B. Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-25017 Filed 10-16-91; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 112

[Docket No. 91-059]

Viruses, Serums, Toxins, and Analogous Products; Amendment of the Labeling Requirements for Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations pertaining to labeling of autogenous biologics. The current regulations prohibit manufacturers of autogenous biologics from including on the label the identity of the flock or herd from which the culture was isolated or the name of the person(s) responsible for making the isolation. This amendment removes these restrictions and allows the manufacturers to provide more complete information on the labels of all autogenous biologics.

EFFECTIVE DATE: October 17, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Michele M. April, Senior Staff Veterinarian, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 301-436-5864.

SUPPLEMENTARY INFORMATION:

Background

Autogenous biologics are products prepared from cultures of microorganisms which have been inactivated and are nontoxic. Microorganisms used to prepare autogenous products are isolated from sick or dead animals or birds and represent the causative agent or agents of the disease affecting such animals or birds. Under normal circumstances, microorganisms isolated from one herd of flock are not used to prepare an autogenous biologic for another herd or flock.

The regulations being amended (9 CFR 112.7(g)) prohibit autogenous biologics labels from showing the identity of the herd or flock from which the culture was isolated, or the name of the person(s) responsible for making the isolation. The Agency had received requests from manufacturers that they be permitted to include this information on their labels for autogenous biologics. Upon analyzing these requests and considering the nature of these products, it is the Agency's opinion that allowing the addition of this information to labels will enable manufacturers to provide more complete identification on their product. Current regulations allow the use of an organism for production of autogenous biologics for up to 12 months. This may involve the use of the organism in the production and distribution of several serials during this time period. More complete identification on labeling will enable manufacturers to keep better records and better control of their inventory. This will help them to ensure that autogenous biologics are produced from the microorganisms isolated from a particular herd or flock. More complete identification on the product label will also provide the user and consumer added assurance that the autogenous biologic they receive from a manufacturer was produced from microorganisms isolated from their individual herd or flock.

Comments Received

On December 6, 1990, we published a proposed rule in the **Federal Register** (55 FR 50333-50334, Docket No. 89-105). The proposed rule provided that comments would be accepted for 30 days, until January 7, 1991.

We received comments from three licensed manufacturers and one national trade association representing major research-based U.S. manufacturers of animal health products. All comments were in favor of the proposed rule and supported the position that if manufacturers are allowed to include the identity of the herd or flock from which the culture is isolated and/or the name of the person(s) responsible for making the isolation, then they would be able to maintain better records and better control of their autogenous biological products.

One commenter suggested that the proposed changes be mandatory rather than optional. The Agency did not contemplate imposing this type of requirement when it issued the proposed rule. Therefore, it cannot be part of this final rule. Some manufacturers use computer generated labels for their autogenous biologics. For these firms, adding to the label the identity of the herd or flock from which the culture was isolated and the name of the person responsible for making the isolation would result in little or no additional time or expense.

However, some companies have their labels for autogenous biologics printed offsite. To add this information to labels for each serial would be costly and cause time delays in shipment of the product.

The Agency is planning to revise 9 CFR Part 112, Packaging and Labeling, in the future. If it appears that this information should be mandatory on a label, then the Agency will include such a requirement as a part of the proposed rule. This will allow all manufacturers ample time to comment.

Therefore, we are amending § 112.7 by removing paragraph (g) and redesignating paragraphs (h) through (l) as paragraphs (g) through (k). The general labeling requirements described in paragraph (g) also appear in § 112.2(a)(5), and need not be retained in § 112.7.

Effective Date

This is a substantive rule which relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is warranted to provide relief to those persons who are adversely affected by restrictions we no longer find necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Previously, manufacturers of autogenous biologics were prohibited from including on labels the identity of the herd or flock from which the culture was isolated or the name(s) of the person(s) responsible for making the isolations. This rule allows for greater flexibility in labeling autogenous biologics.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this rule will be submitted for approval to the Office of Management and Budget.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 112

Animal biologics.

Accordingly, 9 CFR Part 112 is amended as follows:

PART 112—PACKAGING AND LABELING

1. The authority citation for 9 CFR part 112 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51 and 371.2(d).

§ 112.7 [Amended]

2. In § 112.7, paragraph (g) is removed, and paragraphs (h) through (l) are redesignated as paragraphs (g) through (k).

Done in Washington, D.C., this 11th day of October, 1991.

Robert B. Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-25018 Filed 10-16-91; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Inspector General

32 CFR Parts 293, 312

[Office of the Inspector General Policy and Procedures Manual, Chapter 33]

Office of the Inspector General (OIG) Privacy Program

AGENCY: Office of the Inspector General, Department of Defense.

ACTION: Final rule.

SUMMARY: The Office of the Inspector General, Department of Defense is publishing its Privacy Program procedural and exemption rules in accordance with the Privacy Act of 1974, as amended, (5 U.S.C. 552a). Also, the Defense Criminal Investigative Service (DCIS) and its Privacy Act system of records are now under the cognizance of the Department of Defense Inspector General. This document also removes part 293.

EFFECTIVE DATE: October 17, 1991.

SUPPLEMENTARY INFORMATION: On September 10, 1991, at 56 FR 46137, the Department of Defense Inspector General published a proposed rule to delete 32 CFR part 293, and add 32 CFR part 312. No comments were received, therefore, the Department of Defense Inspector General is adopting the procedural and exemption rules at 32 CFR part 312.

List of Subjects in 32 CFR Parts 293 and 312

Privacy.

Accordingly, for reasons set forth in the preamble, 32 CFR Ch. I is amended by removing part 293 and adding part 312 as follows:

PART 293—[REMOVED]

PART 312—OFFICE OF THE INSPECTOR GENERAL (OIG) PRIVACY PROGRAM

Sec.

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

§ 312.1 Purpose.

Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and 32 CFR part 286a–DoD Privacy Program, the following rules of procedures are established with respect to access and amendment of records maintained by the Office of the Inspector General (OIG) on individual subjects of these records.

§ 312.2 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this part, the term "agency" means the Office of the Inspector General (OIG), Department of Defense.

§ 312.3 Procedure for requesting information.

Individuals should submit inquiries regarding all OIG files by mail to the Assistant Inspector General for Investigations, ATTN: FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202-2884. All personal visits will require some form of common identification.

§ 312.4 Requirements for identification.

Only upon proper identification will any individual be granted access to records which pertain to him/her. Identification is required both for accurate record identification and to avoid disclosing records to unauthorized individuals. Requesters must provide their full name and as much information as possible in order that a proper search for records can be accomplished. Requests made by mail should be accompanied by a notarized signature. Inclusion of a telephone number for the

requester is recommended to expedite certain matters. Requesters applying in person must provide an identification with photograph, such as a driver's license, military identification card, building pass, etc.

§ 312.5 Access by subject individuals.

(a) No individual will be allowed access to any information compiled or maintained in reasonable anticipation of civil or criminal actions or proceedings or otherwise exempt under § 312.12. Requests for pending investigations will be denied and the requester instructed to forward another request giving adequate time for the investigation to be completed. Requesters shall be provided the telephone number so they can call and check on the status in order to know when to resubmit the request.

(b) Any individual may authorize OIG to provide a copy of his/her records to a third party. This authorization must be in writing and should be provided OIG with the initial request along with a notarized signature.

§ 312.6 Fees.

Requesters will be charged only for the reproduction of requested documents and special postal methods, such as express mail, if applicable. There will be no charge for the first copy of a record provided to any individual. Thereafter, fees will be computed as set forth in appropriate DoD Directives and Regulations.

§ 312.7 Request for correction or amendment.

(a) Requests to correct or amend a file shall be addressed to the system manager in which the file is located. The request must reasonably describe the record to be amended; the items to be changed as specifically as possible, the type of amendment (e.g., deletion, correction, amendment), and the reason for amendment. Reasons should address at least one of the following categories: Accuracy, relevance, timeliness, completeness, fairness. The request should also include appropriate evidence which provide a basis for evaluating the request. Normally all documents submitted, to include court orders, should be certified. Amendments under this part are limited to correcting factual matters and not matters of official judgment or opinions, such as performance ratings, promotion potential, and job performance appraisals.

(b) Requirements of identification as outlined in § 312.4 apply to requests to correct or amend a file.

(c) Incomplete requests shall not be honored, but the requester shall be contacted for the additional information needed to process the request.

(d) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any amendments or changes to these records normally are made through the specific procedures established for the amendment of such records.

(e) Nothing in the amendment process is intended or designed to permit a collateral attack upon what has already been the subject of a judicial or quasi-judicial determination. However, while the individual may not attack the accuracy of the judicial or quasi-judicial determination, he or she may challenge the accuracy of the recording of that action.

§ 312.8 OIG review of request for amendment.

(a) A written acknowledgement of the receipt of a request for amendment of a record will be provided to the requester within 10 working days, unless final action regarding approval or denial will constitute acknowledgement.

(b) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies or DoD components shown by disclosure accounting records to have received copies of the record, or to whom disclosure has been made, will be notified of the amendment by the responsible OIG official.

(c) Where there is a determination to deny all or a portion of a request to amend a record, OIG will promptly advise the requesting individual of the specifics of the refusal and the reasons; and inform the individual that he/she may request a review of the denial(s) from the OIG designated official.

§ 312.9 Appeal of initial amendment decision.

(a) All appeals of an initial amendment decision should be addressed to the Assistant Inspector General for Investigations, ATTN: FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202-2884. The appeal should be concise and should specify the reasons the requester believes that the initial amendment action by the OIG was not satisfactory. Upon receipt of the appeal, the designated official will review the request and make a determination to approve or deny the appeal.

(b) If the OIG designated official decides to amend the record, the requester and all previous recipients of the disputed information will be notified of the amendment. If the appeal is denied, the designated official will notify the requester of the reason of the denial, of the requester's right to file a statement of dispute disagreeing with the denial, that such statement of dispute will be retained in the file, that the statement will be provided to all future users of the file, and that the requester may file suit in a federal district court to contest the OIG decision not to amend the record.

(c) The OIG designated official will respond to all appeals within 30 working days or will notify the requester of an estimated date of completion if the 30 day limit cannot be met.

§ 312.10 Disclosure of OIG records to other than subject.

No record containing personally identifiable information within a OIG system of records shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent of the individual subject of the record or as provided for in the Act and DoD 5400.11-R (32 CFR part 286a).

§ 312.11 Penalties.

(a) An individual may bring a civil action against the OIG to correct or amend the record, or where there is a refusal to comply with an individual request or failure to maintain any records with accuracy, relevance, timeliness and completeness, so as to guarantee fairness, or failure to comply with any other provision of the Privacy Act. The court may order correction or amendment of records. The court may enjoin the OIG from withholding the records and order the production of the record.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1) (C) or (D), the United States shall be liable for the actual damages sustained, but in no case less than the sum of $1,000 and the costs of the action with attorney fees.

(c) Criminal penalties may be imposed against an officer or employee of the OIG who discloses material, which he/she knows is prohibited from disclosure, or who willfully maintains a system of records without compliance with the notice requirements.

(d) Criminal penalties may be imposed against any person who knowingly and willfully requests or obtains any record concerning another individual from an agency under false pretenses.

(e) All of these offenses are misdemeanors with a fine not to exceed $5,000.

§ 312.12 Exemptions.

(a) *Exemption for classified records.* Any record in a system of records maintained by the Office of the Inspector General which falls within the provisions of 5 U.S.C. 552a(k)(1) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G–I) and (f) to the extent that a record system contains any record properly classified under Executive Order 12356 and that the record is required to be kept classified in the interest of national defense or foreign policy. This specific exemption rule, claimed by the Inspector General under authority of 5 U.S.C. 552a(k)(1), is applicable to all systems of records maintained, including those individually designated for an exemption herein as well as those not otherwise specifically designated for an exemption, which may contain isolated items of properly classified information

(b) The Inspector General of the Department of Defense claims an exemption for the following record systems under the provisions of 5 U.S.C. 552a(j) and (k)(1)–(7) from certain indicated subsections of the Privacy Act of 1974. The exemptions may be invoked and exercised on a case by case basis by the Deputy Assistant Inspector General for Investigations or the Director, Investigative Support Directorate and Freedom of Information Act/Privacy Act Division Chief which serves as the Systems Program Managers. Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of the records system.

(c) No personal records releasable under the provisions of The Freedom of Information Act (5 U.S.C. 552) will be withheld from the subject individual based on these exemptions.

(d) *System Identifier:* CIG–04

(1) *System name:* Case Control System.

(2) *Exemption:* Any portion of this system which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:* From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede OIG's criminal law enforcement.

(5) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

(6) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to OIG's close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(7) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(8) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(9) From subsection (e)(4) (G) through (I) because this system of records is exempt from the access provisions of subsection (d).

(10) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(11) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(12) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(13) For comparability with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness, and completeness cannot apply to this record system. Information gathered in an investigation is often fragmentary and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(e) *System Identification:* CIG–06.

(1) *System name*: Investigative Files.

(2) *Exemption*: Any portion of this system which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G), (H), (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority*: 5 U.S.C. 552a(j)(2).

(4) *Reasons*: From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede OIG's criminal law enforcement.

(5) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

(6) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with

respect to what information is relevant or necessary. Also, due to OIG's close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(7) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(8) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(9) From subsection (e)(4) (G) through (I) because this system of records is exempt from the access provisions of subsection (d).

(10) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(11) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(12) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(13) For comparability with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness, and completeness cannot apply to this record system. Information gathered in an investigation is often fragmentary and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(f) *System Identifier*: CIG–15

(1) *System name*: Special Inquiries Investigative Case File and Control System.

(2) *Exemption:* Any portions of this system which fall under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G–H), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2).

(4) *Reasons:* From subsection (c)(3) because disclosures from this system could interfere with the just, thorough and timely resolution of the compliant or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents.

(5) From subsection (d) because disclosures from this system could interfere with the just thorough and timely resolution of the compliant or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Disclosures could also subject sources and witnesses to harassment or intimidation which jeopardize the safety and well-being of themselves and their families.

(6) From subsection (e)(1) because the nature of the investigation function creates unique problems in prescribing specific parameters in a particular case as to what information is relevant or necessary. Due to close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another government agency. It is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(7) From subsection (e)(4) (G) through (H) because this system of records is exempt from the access provisions of subsection (d).

(8) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

§ 312.13 Ownership of OIG investigative records.

(a) Criminal and or civil investigative reports shall not be retained by DoD recipient organizations. Such reports are the property of OIG and are on loan to the recipient organization for the purpose for which requested or provided. All copies of such reports shall be destroyed within 180 days after the completion of the final action by the requesting organization.

(b) Investigative reports which require longer periods of retention may be retained only with the specific written approval of OIG.

§ 312.14 Referral of records.

An OIG system of records may contain records other DoD Components or Federal agencies originated, and who may have claimed exemptions for them under the Privacy Act of 1974. When any action is initiated on a portion of any several records from another agency which may be exempt, consultation with the originating agency or component will be affected. Documents located within OIG system of records coming under the cognizance of another agency will be referred to that agency for review and direct response to the requester.

Dated: October 11, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–25021 Filed 10–16–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 91-051]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between July 1, 1991 and September 30, 1991 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESSES: The complete text of any temporary regulation may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Don Harris, Regulatory Paralegal, Marine Safety Council at (202) 267-1477 between the hours of 8 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1991 through September 30, 1991 unless otherwise indicated.

Docket No.	Location	Type	Effective date
CGD1-91-060	Kill Van Kull	Safety	May 20, 1991.
CGD1-91-084	Indian Neck, MA	Safety	July 6, 1991.
CGD1-91-089	American Wharf Firework	Safety	Aug. 25, 1991.
CGD1-91-099	Rhode Island Sound	Safety	June 25, 1991.
CGD1-91-104	Vineyard Haven Harbor	Safety	July 8, 1991.
CGD1-91-107	Upper Bay, NY & NJ	Safety	Aug. 8, 1991.
CGD1-91-108	Arthur Kill, NY & NJ	Safety	July 9, 1991.
CGD1-91-110	Upper Bay, NY & NJ	Safety	Aug. 7, 1991.
CGD1-91-111	Thames River	Security	July 12, 1991.
CGD1-91-116	Quonset Point, RI	Safety	July 25, 1991.
CGD1-91-121	Montauk Grand Prix	Special	Aug. 10, 1991.
CGD1-91-122	Great Salt Pond Channel	Safety	Aug. 3, 1991.
CGD1-91-124	Mount Hope Bay, RI	Safety	Aug. 9, 1991.
CGD1-91-125	Battleship Cover	Safety	Aug. 10, 1991.
CGD1-91-126	Taunton River, MA	Safety	Aug. 10, 1991.
CGD1-91-130	AuSable River/Lake Champlain	Safety	Sept. 10, 1991.
CGD1-91-134	Gowanus Canal Upper Bay, NY	Safety	Aug. 13, 1991.
CGD1-91-135	Shelburne Bay, Lake Champlain	Safety	Aug. 14, 1991.
CGD1-91-136	North Channel, Jamaica Bay, NY	Safety	Sept. 1, 1991.
CGD1-91-139	Upper Bay, Lower Hudson River	Safety	Aug. 29, 1991.
CGD1-91-140	North Harlem River, Manhattan	Safety	Aug. 29, 1991.
CGD1-91-142	Coasters Harbor Island	Safety	Aug. 29, 1991.
CGD1-91-143	Provincetown Harbor, MA	Safety	Sept. 8, 1991.
CGD1-91-144	Melville Defense Fuel Support Pt	Safety	Sept. 7, 1991.
CGD1-91-145	Coasters Harbor Island	Safety	Sept. 8, 1991.
CGD1-91-149	Lower East River, New York	Security	Sept. 23, 1991.
CGD1-91-150	Lower East River, New York	Security	Sept. 24, 1991.
CGD5-91-043	13th Annual Diet Pepsi Triathlon	Special	Sept. 29, 1991.
CGD7-91-69	Great American Canoe Race	Special	July 4, 1991.
CGD7-91-70	Suncoast Offshore Grand Prix	Special	July 7, 1991.
CGD7-91-71	City of Charleston, SC	Special	July 4, 1991.
CGD7-91-72	City of Charleston, SC	Special	July 6, 1991.
CGD7-91-73	Sun Honda Offshore Challenge	Special	July 6, 1991.
CGD7-91-76	St. John River, Pablo Creek, FL	Special	July 11, 1991.
CGD7-91-78	City of Augusta, GA	Special	July 19, 1991.
CGD7-91-79	City of Beaufort, SC	Special	July 20, 1991.
CGD7-91-80	City of Miami Beach	Special	July 27, 1991.
CGD7-91-83	St. Augustine Inlet	Special	Sept. 29, 1991.
CGD7-91-85	San Juan Harbor, San Juan, P.R.	Special	Aug. 18, 1991.
CGD7-91-87	Ponce De Leon Inlet, FL	Special	Aug. 25, 1991.

Docket No.	Location	Type	Effective date
CGD11-91-09	San Diego Offshore Challenge	Special	Aug. 25, 1991.
CGD13-91-04	Rainer Glenn Brooke Memorial	Special	July 28, 1991.

CAPTAIN OF THE PORT REGULATIONS

Docket No.	Location	Type	Effective date
Boston 91-67	Boston Inner Harbor	Safety	July 6, 1991.
Boston 91-123	Boston Harbor	Safety	Aug. 11, 1991.
Charleston 91-54	Cooper River, SC	Safety	May 29, 1991.
Charleston 91-81	Cooper River, SC	Safety	July 30, 1991.
Corpus Christi 91-03	Corpus Christi Bay	Safety	Apr. 13, 1991.
Corpus Christi 91-04	Corpus Christi Channel	Safety	May 9, 1991.
Corpus Christi 91-05	Corpus Christi Channel	Safety	May 10, 1991.
Corpus Christi 91-06	GIWW Mile Marker 539.5	Safety	July 4, 1991.
Corpus Christi 91-07	Corpus Christi Channel	Safety	July 13, 1991.
Huntington 91-04	Elk River Mile 0.6 to 1.6	Safety	July 26, 1991.
Jacksonville 91-61	St. Johns River	Safety	July 4, 1991.
Jacksonville 91-62	Halifax River	Safety	July 4, 1991.
Jacksonville 91-63	St. Johns River	Safety	July 4, 1991.
Jacksonville 91-64	Amelia River	Safety	July 4, 1991.
Jacksonville 91-65	Tolomato River	Safety	July 4, 1991.
Jacksonville 91-66	Atlantic Ocean	Safety	July 4, 1991.
Jacksonville 91-67	Indian River, Cocoa, Fl	Safety	July 4, 1991.
Jacksonville 91-75	Atlantic Ocean/St. Johns	Safety	July 16, 1991.
Jacksonville 91-77	Atlantic Ocean/Mayport	Safety	July 16, 1991.
Jacksonville 91-96	St. Johns River	Safety	Aug. 31, 1991.
LA/LB 91-20	Ports of LA/LB	Safety	Aug. 2, 1991.
LA/LB 91-21	Port of Long Beach	Safety	Sep. 2, 1991.
LA/LB 91-22	Ports of LA/LB	Safety	Aug. 28, 1991.
Memphis 91-06	Lower Mississippi River	Safety	Sep. 5, 1991.
Mobile 91-11	Upper Mobile Bay	Safety	July 4, 1991.
Mobile 91-12	Boggy Bayou, Valparaiso	Safety	July 4, 1991.
New Orleans 91-01	Lower Mississippi	Safety	July 4, 1991.
New Orleans 91-02	Lower Mississippi	Safety	July 4, 1991.
New Orleans 91-03	Oauchita River	Safety	July 4, 1991.
New Orleans 91-04	Lower Mississippi	Safety	July 4, 1991.
New Orleans 91-05	Ouachita River	Safety	July 21, 1991.
New Orleans 91-06	Lower Mississippi	Safety	July 17, 1991.
New Orleans 91-07	Ouachita River	Safety	Aug. 10, 1991.
Paducah 91-04	Ohio River	Safety	July 4, 1991.
Paducah 91-05	Tennessee River	Safety	July 14, 1991.
Paducah 91-06	Tennessee River	Safety	July 29, 1991.
Paducah 91-07	Cumberland River	Safety	July 4, 1991.
Paducah 91-08	Tennessee River	Safety	July 4, 1991.
Paducah 91-09	Ohio River	Safety	July 20, 1991.
Paducah 91-10	Tennessee River	Safety	July 27, 1991.
Paducah 91-11	Ohio River	Safety	July 27, 1991.
Paducah 91-12	Tennessee River	Safety	Aug. 26, 1991.
Pittsburgh 91-03	Ohio River	Safety	July 3, 1991.
Puget Sound 91-04	Moving Safety Zone	Safety	June 20, 1991.
Puget Sound 91-05	Moving Safety Zone	Safety	June 20, 1991.
Puget Sound 91-06	Moving Safety Zone	Safety	June 20, 1991.
Puget Sound 91-07	Magnuson Park	Safety	June 23, 1991.
Puget Sound 91-08	Elliott Bay, WA	Safety	July 4, 1991.
Puget Sound 91-09	Commencement Bay	Safety	July 4, 1991.
Puget Sound 91-10	Lake Union, WA	Safety	July 4, 1991.
Puget Sound 91-11	Bellingham Bay, WA	Safety	July 4, 1991.
St. Louis 91-09	Upper Mississippi River	Safety	June 16, 1991.
St. Louis 91-10	Upper Mississippi River	Safety	July 11, 1991.
San Diego 91-01	San Diego Bay	Safety	Sep. 28, 1991.
Sault Ste Marie	All waters Pine River	Safety	Sep. 20, 1991.
Tampa 91-58	Crystal River-Kings Bay	Safety	July 3, 1991.
Tampa 91-86	Crystal River-Kings Bay	Safety	Aug. 30, 1991.
Tampa 91-97	Mullet Key Channel	Safety	Sep. 26, 1991.
Western Alaska 91-01	Sunfish Well, Cook Inlet	Safety	July 13, 1991.
Western Alaska 91-02	Marmot Bay, Alaska	Security	Aug. 20, 1991.

Dated: October 10, 1991.

D.M. Wrye,

Lieutenant Commander, USCG, Acting Executive Secretary, Marine Safety Council.

[FR Doc. 91-24962 Filed 10-16-91; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Retention Period for Registered Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is adopting its proposal of June 10, 1991, to amend its regulations to standardize the retention period for undeliverable registered, insured, certified, and return receipt for merchandise mail.

EFFECTIVE DATE: December 15, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Mickey Wood, (202) 268–5441.

SUPPLEMENTARY INFORMATION: On June 10, 1991, the Postal Service published for comment in the **Federal Register** (56 FR 26641) a proposed change to section 159.323f(1), Domestic Mail Manual (DMM). Interested persons were invited to submit written comments concerning the proposed change by July 10, 1991. The Postal Service received written comments from one individual. The commenter was in complete agreement with the proposal.

The Postal Service hereby adopts the following amendment to part 159 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations to set a standard 15 day maximum retention period for undeliverable registered, insured, certified, and return receipt for merchandise mail. See 39 CFR part 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 159–UNDELIVERABLE MAIL

2. Delete 159.323f(1), renumber 159.323f (2) and (3) as (1) and (2) respectively, and amend new 159.323f(1) to read as follows:

159.323 Registered, Certified, Insured, COD Mail, and Return Receipt for Merchandise.

* * * * *

f. Undeliverable registered, insured, COD, certified, and return receipt for merchandise mail is retained for not less than 3 days.

(1) Hold registered, insured, certified, and return receipt for merchandise mail a maximum of 15 days, unless the sender specifies that it be held for fewer days.

* * * * *

A transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Council, Legislative Division.

[FR Doc. 91–24922 Filed 10–16–91; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–033; FRL–3996–9]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Volatile Organic Compound (VOC) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Florida State Implementation Plan (SIP). The revisions were submitted to EPA in response to the May 1988 SIP call to areas in Florida which were not achieving the National Ambient Air Quality Standards (NAAQS) for ozone. The State of Florida submitted the revisions to EPA in two separate packages dated August 16, 1989, and August 27, 1990. The revisions being approved today correct all of the deficiencies which were identified by EPA in Florida's VOC SIP with the exception of the adoption of capture efficiency regulations. The revisions have been adopted into the Florida Administrative Code. Although these revisions were submitted in 1989 and 1990, they meet the RACT fix-up requirement of section 182(a)(2)(A) of the Clean Air Act, as amended on November 15, 1990, Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7511a. Today's action approves all submittals required under section 182(a)(2)(A) with the exception of the capture efficiency regulations (which the State has committed to submit by October 1, 1991), and the three minor corrective items noted under "Supplementary Information." Details regarding each revision being approved today are discussed in the Supplementary Information section of this notice.

EFFECTIVE DATES: This action will be effective December 16, 1991, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Carol Kemker of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Carol Kemker of the EPA Region IV Air Programs Branch at 404–347–2864 or FTS–257–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On May 26, 1988, EPA notified the Governor of Florida that areas of the State had failed to attain the NAAQS for ozone. Since the EPA approved attainment date of December 31, 1987, had passed, the Florida SIP was declared substantially inadequate to achieve the NAAQS for ozone. EPA requested that Florida respond to the SIP call in two phases. The Phase I response was due approximately one year following issuance of the SIP call. A Phase II response would have been due at a date specified following issuance of final EPA policy program requirements for ozone and CO nonattainment areas. However, the requirements and schedule for the Phase II SIP call are now provided in the Clean Air Act Amendments of 1990. One of the Phase I requirements was the correction of EPA-identified deviations in the volatile organic compound (VOC) regulations within the Florida SIP.

On June 15, 1989, the Florida Environmental Regulation Commission approved the first group of revisions to the Florida VOC regulations. The remaining revisions, with the exception of capture efficiency, were approved by the Florida Environmental Regulation Commission on August 24, 1990. The Florida Department of Environmental Regulation submitted the two sets of revisions to the Florida VOC regulations to EPA on August 16, 1989, and August 27, 1990. Florida requested that the revisions be adopted as part of the federally-approved SIP. EPA is today approving the following revisions:

I. In Section 17–2.100 Definitions, several definitions were modified. All of

the definitional changes are consistent with current Agency policy. The changes are as follows:

(1) The definition of "coating" was revised to add the words "decorative of functional" to describe the film applied to a surface.

(2) The definition of "Potential Emissions" or "Potential to Emit" was modified to make it clear that potential is based on enforceable physical operational limitations.

(3) The definition of "Volatile Organic Compound" (VOC) has been revised to eliminate the use of a vapor pressure cutoff and list all exempt VOC compounds.

(4) The definition of "Vinyl Coating" has been revised to make it clear that emission reduction credit cannot be taken by averaging plastisols with other vinyl coating.

II. Section 17–2.650(1)(a) has been modified to replace the word "section" with the word "subsection."

III. Section 17–2.650(1)(b) has been renamed "Permits, Recordkeeping, and Compliance Reporting Requirements" and has been renumbered to accommodate the changes. The subsections which contained compliance dates which have passed have been deleted. Subsection 2.a. requires the source to maintain records adequate to determine compliance using either low solvent technology or add-on control equipment.

IV. Section 17–2.650(1)(c)1 has been revised to make it clear that applicability is based on the sum of source emissions at a facility subject to the same limitation under Rule 17–2.650(1)(f) (i.e., subject to the same CTG).

V. Section 17–2.650(1)(d) has been revised to specify the treatment of exempt solvents in compliance calculations. Because the list of exempt solvents is included in the revised definition of VOC, the list has been deleted from this section. The second set of revisions further refined the process to account for multiple solvents with different volumes and densities.

VI. Section 17–2.650(e) Alternate Means of Compliance was deleted and replaced with a section allowing 24-hour averaging. The averaging is limited to a single source point with a single emission limit.

VII. Section 17–2.650(f) has been revised to add a requirement that equivalency calculations be made on a solids applied basis.

VIII. In Section 17–2.650(f)2.a., the definition of coating line could be interpreted to require that the line have an oven. Therefore, the definition has been revised to make it clear that a coil coating line may or may not have an oven.

IX. Section 17–2.650 (f)3.a. and (f)4.a. have been revised to make it clear that the paper coating and the fabric and vinyl coating regulations also apply to saturation operations.

X. Section 17–2.650(f) 5.b., 6.a., and 14.a.(iii) have been revised to allow transfer efficiency (TE) credit for surface coating of metal furniture, large appliances, and miscellaneous metal parts and products, which can demonstrate TE greater than the 60% baseline. The rules allow such credit only if EPA and the State approve a test method for determination of transfer efficiency.

XI. Section 17–2.650(f)16. Graphic Arts Systems has been revised to make it clear that applicability determinations are made based on potential emissions prior to control.

XII. Section 17–2.965 Compliance Schedules for Reasonably Available Control Technology (RACT) Requirements has been added to provide a schedule for sources to meet any new requirements imposed by the revisions to Section 17–2.650.

As a result of a further review of the August 16, 1989, portion of corrections, EPA informed the State that three minor corrections should be made. They are:

(1) Adding a definition of the term "secondary emissions;"

(2) Adding the term "as applied" after "VOC/gallon of solids" in Section 17–2.650(1)(f); and

(3) Correcting a typo in the VOC definition.

The State of Florida agreed in a letter dated August 27, 1990, to address these areas when other SIP revisions are made during 1991.

On November 9, 1987, Winston A. Smith, EPA Region IV Air Division Director, sent Steve Smallwood, Chief of the Florida DER Bureau of Air Quality Management a review of adopted regulations which identified technical problems and inconsistencies. Item 12 of this review remains unresolved. This item reads as follows:

• State rules should state the procedures the relevant agencies would use to measure capture control device efficiencies. For example, the rules for some types of sources or control systems should require the use of temporary enclosures, rather than material balances, in capture efficiency tests. Provisions that require "well engineered capture systems" or "maximum reasonable capture" should be replaced with specific control requirements. Methods for determining capture efficiency are not specified. A more basic problem is that the regulations which allow incineration as a control option (e.g., metal furniture, graphic arts, and large appliance coating) require only 90% efficiency across the incinerator and do not consider capture efficiency.

The State of Florida agreed in a letter dated August 30, 1990, to address this issue by December 1991. In a letter dated May 10, 1991, the State of Florida agreed to address this issue by October 1991, consistent with an EPA request to do so.

Final Action

EPA is today approving the revisions to the Florida Volatile Organic Compound air quality regulations listed above. All of the revisions being approved are consistent with Agency policy.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 222) from the requirements of section 3 of the Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State implementation plan. Each request for

revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Since these SIP revisions meet the requirements of the RACT fix-up provision, section 182(a)(2)(A), the Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. EPA is approving these provisions pursuant to section 182(a)(2)(A).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 23, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(72) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(72) Revisions to Chapter 17–2 of the Florida Administrative Code which were submitted on August 16, 1989, and August 27, 1990.

(i) Incorporation by reference.

(A) Amendments to FAC 17–2.100(41), (153) and (217); 17–2.510(2)(a) introductory paragraph, 17–2.650(1)(a), (1)(b) title, (1)(b)2., (1)(c)1, (1)(d), (1)(e), (1)(f) introductory paragraph, (1)(f)2.a., (1)(f)3.a., (1)(f)5.b., (1)(f)6.a.(i), and (1)(f)14.a.(iii); which became State effective on August 30, 1989.

(B) Amendments to FAC 17–2.100(220); 17–2.650(1)(b)2, (1)(d), (1)(e), (1)(f)4.a., and (1)(f)16.a.; 17–2.700 TABLE 700–1; and 17–2.965, which became State effective on September 13, 1990.

(ii) Other material—None.

3. Section 52.531 is added to read as follows:

§ 52.531 VOC deficiency correction.

(a) Amendments to FAC 17–2.100 (42), (153), and (217); 17–2.510(2)(a); 17–2.650(1)(a), (1)(c)1, (1)(d), (1)(f), (1)(f)2.a., 17–2.965(1)–(2)(b)1. and (3), are approved. The State submitted amendments were intended to correct deficiencies cited in a letter calling for the State to revise its SIP for ozone from Greer C. Tidwell, the EPA Regional Administrator, to Governor Martinez on May 26, 1988, and clarified in a letter from Winston A. Smith, EPA Region IV Air Division Director, to Steve Smallwood, Chief of the Florida Department of Environmental Regulation Bureau of Air Quality Management.

(b) Deficiencies in the following aspects of the rule, however, have not been corrected:

Method for determining capture efficiency are not specified. A more basic problem is that the regulations which allow incineration as a control option (e.g., metal furniture, graphic arts, and large appliance coating) require only 90 percent efficiency across the incinerator and do not consider capture efficiency.

The above deficiency must be corrected according to the letters mentioned above, the proposed post-1987 ozone policy (52 FR 45044), and other EPA guidance relating to the deficiencies before the SIP for ozone can be fully approved.

[FR Doc. 91–25020 Filed 10–16–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OCC–022–F]

Prepaid Health Care: Obsolete Provisions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule amends the regulations on prepaid health care to remove outdated content, convert undesignated center headings to designated subpart headings, and redesignate specified sections. These changes are necessary to—

- Make the section numbers of the redesignated sections available for rules needed to implement recent changes in law and policy;
- Preclude confusion as to the rules that are currently in effect; and
- Facilitate reference to different portions of part 417, through the use of the subpart titles.

DATES: Effective date: These rules are effective on November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 245–0383.

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SUPPLEMENTARY INFORMATION: The regulations in part 417, which pertain to health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs), are based partly on the Social Security Act (the Act) and partly on the Public Health Service Act (the PHS Act). The regulations have not been revised to reflect certain changes in those laws.

The rules in §§ 417.201–417.292 governed Medicare/HMO contracts that were entered into before the enactment of section 114 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Those regulations were superceded by the rules implementing TEFRA, set forth in §§ 417.400–417.492, with respect to new contracts. However, the earlier regulations continued to apply to "pre-TEFRA" contracts. There are no longer any pre-TEFRA contracts in existence, and, accordingly, §§ 417.201–417.292 are removed.

Sections 1303, 1304, 1305 and 1305A of the PHS Act sought to encourage development of HMOs by providing for grants, loans, and loan guarantees for planning and initial development, for

initial costs of operation, and for acquisition and construction of facilities. These provisions were initially implemented by §§ 417.110–417.137. Sections 417.170–417.180 were developed later to reflect expanded authority for construction loans under section 1305A.

Sections 1303, 1304, and 1305A were later repealed. Under section 1305, loans and loan guarantees could not be made after September 30, 1986.

Many of the loans and loan guarantees awarded before that date are still outstanding and must be administered by HCFA. Therefore, the regulations dealing with how the loaned or guaranteed funds may be spent are retained. However, in order to free the section numbers needed for new rules, we are redesignating §§ 417.110–417.137 as §§ 417.910–417.937 under a new subpart V—Administration of Outstanding Loans and Loan Guarantees.

In addition, since no new loans can be awarded, the rules dealing with new loans §§ 417.170–417.180, are removed as completely obsolete.

Current subpart headings and undesignated centered headings are removed to make way for new subpart headings.

Waiver of Proposed Rulemaking

These rules make purely technical changes that have no budget or program impact and are urgently needed to free section numbers for new rules currently under development. Accordingly, we find that notice and opportunity for public comment are unnecessary, and that there is good cause to waive proposed rulemaking procedures.

Regulatory Impact Statement

Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that is likely to have an annual impact of $100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the order.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

These are purely technical amendments that do not change policy or have any impact on the general economy, on small entities, or on the operation of small rural hospitals. Accordingly, we have determined that the requirements of Executive Order 12291 and of the RFA do not apply, and the Secretary certifies that this rule will not affect the operation of small rural hospitals.

Paperwork Reduction Act

This rule contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organizations (HMOs), Medicare.

DERIVATION TABLE FOR 42 CFR PART 417, SUBPART V

New section	Old section
417.910	417.110
417.911	417.111
417.912	417.112
417.913	417.113
417.914	417.114
417.915	417.115
417.916	417.116
417.917	417.117
417.918	417.118
417.919	417.119
417.920	417.120
417.921	417.121
417.922	417.122
417.923	417.123
417.924	417.124
417.925	417.125
417.926	417.126
417.930	417.130
417.931	417.131
417.932	417.132
417.933	417.133
417.934	417.134
417.935	417.135
417.936	417.136
417.937	417.137

42 CFR chapter IV is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a) (1) (A), 1861(s) (2) (H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a) (1) (A), 1395x(s) (2) (H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e-17), unless otherwise noted.

2. In part 417, the following changes are made:

Subparts A, B, C, and D [Amended]

a. The headings for subparts A, B, C, and D and all centered headings are removed.

§§ 417.110 through 417.137 [Redesignated as §§ 417.910 through 417.937].

b. Section 417.110 through 417.137 are redesignated as §§ 417.910 through 417.937.

§§ 417.170 through 417.180 and 417.201 through 417.292 [Removed].

c. Sections 417.170 through 417.180 and 417.201 through 417.292 are removed.

Subpart A—General Provisions

d. Section 417.100 is redesignated as § 417.1 under Subpart A, and the subpart heading is added to read as set forth above.

§ 417.1 [Amended]

e. The introductory text of redesignated § 417.1 is revised to read "As used in Subparts B through F of this part, the following terms have the indicated meanings:"

§ 417.2 [Added]

f. A new § 417.2 is added, to read as follows: § 417.2 basis and scope.

(a) Subparts A through F of this part pertain to the Federal qualification of HMOs under title XIII of the Public Health Service (PHS) Act.

(b) Subparts G through R of this part set forth the rules for Medicare contracts with, and payment to, HMOs and competitive medical plans (CMPs) under section 1876 of the Act.

(c) Subpart U of this part pertains to Medicare payment to health care prepayment plans under section 1833(a)(1)(A) of the Act.

(d) Subpart V of this part applies to the administration of outstanding loans and loan guarantees previously granted under title XIII of the PHS Act.

Subpart B—Qualified Health Maintenance Organization Requirements

g. Sections 417.101 through 417.109 are redesignated as Subpart B and the subpart heading is added to read as set forth above.

h. Subpart C is added and reserved.

Subpart D—Application for Federal Qualification

i. Sections 417.140 through 417.144 are redesignated as Subpart D and the

subpart heading is added to read as set forth above.

Subpart E—Inclusion of Qualified Health Maintenance Organizations in Employee Health Benefits Plans

j. Sections 417.150 through 417.159 are redesignated as Subpart E and the subpart heading is added to read as set forth above.

Subpart F—Continued Regulation of Health Maintenance Organizations

k. Sections 417.160 through 417.166 are redesignated as Subpart F and the subpart heading is added to read as set forth above.

l. Subparts G through I are added and reserved.

Subpart J—Qualifying Conditions for Medicare Contracts

m. Sections 417.400 through 417.418 are redesignated as Subpart J and the subpart heading is added to read as set forth above.

§ 417.401 [Amended]

n. In § 417.401, in the introductory text, "and Subparts K through R of this part," is added immediately before "unless".

Subpart K—Enrollment, Entitlement, and Disenrollment under Medicare Contract

o. Sections 414.420 through 417.460 are redesignated as Subpart K and the subpart heading is added to read as set forth above.

Subpart L—Medicare Contract Requirements

p. Sections 417.470 through 417.494 are redesignated as Subpart L and the subpart heading is added to read as set forth above.

Subpart M—Change of Ownership and Leasing of Facilities: Effect on Medicare Contract

q. Sections 417.520 through 417.523 are redesignated as Subpart M and the subpart heading is added to read as set forth above.

Subpart N—Medicare Payment to HMOs and CMPs: General Rules

r. Sections 417.524 through 417.528 are redesignated as Subpart N and the subpart heading is added to read as set forth above.

Subpart O—Medicare Payment: Cost Basis

s. Sections 417.530 through 417.576 are redesignated as Subpart O and the subpart heading is added to read as set forth above.

Subpart P—Medicare Payment: Risk Basis

t. Sections 417.580 through 417.598 are redesignated as Subpart P and the subpart heading is added to read as set forth above.

Subpart Q—Beneficiary Appeals

u. Sections 417.600 through 417.638 are redesignated as Subpart Q and the subpart heading is added to read as set forth above.

Subpart R—Medicare Contract Appeals

v. Sections 417.640 through 417.694 are redesignated as Subpart R and the subpart heading is added to read as set forth above.

w. Subparts S and T are added and reserved.

Subpart U—Health Care Prepayment Plans

x. Sections 417.800 through 417.810 are redesignated as Subpart U and the subpart heading is added to read as set forth above.

Subpart V—Administration of Outstanding Loans and Loan Guarantees

y. Sections 417.910 through 417.937 are redesignated as Subpart V and the subpart heading is added to read as set forth above.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, and No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: September 25, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: September 30, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-24859 Filed 10-16-91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6891

[CO-930-4214-10; COC-21667]

Withdrawal of National Forest System Lands for Visual and Environmental Protection of a Travel Influence Zone; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 3,817 acres of National Forest System lands from mining for 20 years to protect visual and environmental values in a designated Travel Influence Zone. The lands remain open to such forms of disposition as may be law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: October 17, 1991.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, for the protection of the Highway 550 Travel Influence Zone:

New Mexico Principal Meridian

T. 37 N., R. 8 W.,
Sec. 8, E½E½;
Sec. 9, W½W½;
Sec. 17, E½NE¼, S½SW¼SW¼, NE¼SE¼, and N½SE¼SE¼;
Sec. 18, SE¼SE¼SE¼;
Sec. 19, S½NE¼;
Sec. 20, W½SW¼SW¼ and W½E½SW¼SW¼;
Sec. 30, E½NE¼.
T. 37 N., R. 9 W.,
Sec. 1, lot 7;
Sec. 2, SE¼NE¼, NE¼SE¼, and E½SE¼SE¼;
Sec. 11, E½E½E½;
Sec. 12, SW¼NW¼, W½SW¼, S½NE¼SW¼, and NW¼SE¼;
Sec. 13, NW¼SW¼ and S½SW¼;
Sec. 24, lots 3, 6, and E½NW¼;
Sec. 25, E½NE¼SW¼ and NE¼SE¼SW¼.
T. 38 N., R. 9 W.,
Sec. 1, lot 8 and NW¼SW¼;
Sec. 24 E½W½ and NW¼SW¼;
Sec. 25, SE¼SW¼;

Sec. 36, NE¼NW¼, W½W½, and SE¼SW¼.
T. 39 N., R. 9 W.,
Sec. 12, S½NE¼SW¼, SE¼NE¼SE¼, and S½SE¼;
Sec. 13, W½NE¼NE¼, NE¼NW¼NE¼, E½NW¼NW¼NE¼, NW¼NW¼NW¼NE¼, E½SE¼NW¼NE¼, NW¼SE¼NW¼NE¼, and E½W½SE¼SE¼;
Sec. 25, lots 2, 5, and the east 5 chains of lot 3;
Sec. 36, lots 1, 2, and 3.

A metes and bounds parcel in Township 39 North, Range 8 West, protracted (Protraction Diagram No. 27 accepted November 12, 1964),
Beginning at Corner No. 1, identical with Angle Point No. 3 of Tract 37,
T. 39 N., R. 8 W., from Corner No. 1 by metes and bounds:
S. 0°14' E., 80.00 chs. to Corner No. 2;
East, 17.34 chs. to Corner No. 3;
Northerly to Angle Point No. 7 of Tract 38;
Northerly along the west boundary of Tract 38 to Corner No. 4, identical with Angle Point 4 of Tract 37 Angle Point 3 of Tract 38;
S. 88°19' W., 17.20 chs. to Corner No. 1, the place of beginning. A metes and bounds parcel in Townships 39 and 40 North, Range 8 West, protracted (Protraction Diagram No. 27 accepted November 12, 1964), Beginning at Corner No. 1, identical with Angle Point No. 2 of Tract 37,
T. 39 N., R. 8 W., from Corner No. 1 by metes and bounds:
Easterly, 37.28 chs. along the north boundary of Tracts 37 and 38 to Angle Point No. 1 of Tract 38, continuing East, 13.00 chs. to Corner No. 2;
North, 8.90 chs. to Corner No. 3;
East, 60.00 chs. to Corner No. 4;
North, 70.00 chs. to Corner No. 5;
East, 20.00 chs. to Corner No. 6;
North, 40.00 chs. to Corner No. 7;
West, 20.00 chs. to Corner No. 8;
North, 20.00 chs. to Corner No. 9;
West, 40.00 chs. to Corner No. 10;
South, 10.00 chs. to Corner No. 11;
West, 10.00 chs. to Corner No. 12;
South, 10.00 chs. to Corner No. 13;
West, 10.00 chs. to Corner No. 14;
South, 20.00 chs. Corner No. 15;
West, 10.00 chs. to Corner No. 16;
South, 20.00 chs. to Corner No. 17;
East 10.00 chs. to Corner No. 18;
North, 20.00 chs. to Corner No. 19;
East, 40.00 chs. to Corner No. 20;
South, 40.00 chs. to Corner No. 21;
West, 20.00 chs. to Corner No. 22;
North, 10.00 chs. to Corner No. 23;
West, 10.00 chs. to Corner No. 24;
South, 10.00 chs. to Corner No. 25;
West, 30.00 chs. to Corner No. 26;
South, 20.02 chs. to Corner No. 27;
N. 89°56' W., 30.26 chs. to Corner No. 28;
South, 40.02 chs. to Corner No. 1, the place of beginning.

A strip of land 200 feet from centerline on north side of U.S. Highway 550 and 400 feet from centerline on south side of U.S. Highway 550 through the following described lands:
T. 40 N., R. 8 W., protracted (Protraction Diagram No. 27 accepted November 12, 1964)
Secs. 12, 13, 14, 15 and 22;

Also a strip of land 200 feet on either side of the centerline of U.S. Highway 550 crossing through the following described lands:
T. 40 N., R. 8 W., protracted (Protraction Diagram No. 27 accepted November 12, 1964),
Secs. 21, 28 and 29.

The areas described aggregate 3,817.65 acres of National Forest System lands in La Plata and San Juan Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: October 8, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-24987 Filed 10-16-91; 8:45 am]

BILLING CODE 4310-JB-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580, 581 and 583

[Docket No. 91-1]

Bonding of Non-Vessel-Operating Common Carriers

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is adopting a Final Rule to implement the Non-Vessel-Operating Common Carrier Amendments of 1990, which govern the bonding of non-vessel-operating common carriers ("NVOCCs") in the foreign oceanborne commerce of the United States. This Final Rule sets forth the procedures for the filing of bonds by NVOCCs, prescribes the form and amount of bonds to be filed, establishes procedures for the designation of resident agents for NVOCCs not domiciled in the United States, and requires NVOCCs to state in their tariffs relevant information concerning their bonds. In addition, the Final Rule requires common carriers to determine whether an NVOCC has complied with its tariff and bonding responsibilities before transporting cargo for the account of an NVOCC. The Commission will periodically provide a list of complying NVOCCs to assist common carriers in meeting this requirement.

EFFECTIVE DATE: November 18, 1991.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., suite 12225, Washington, DC 20573, (202) 523-5740.
Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, 1100 L Street, NW., suite 10220, Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION:

I. Background

On January 15, 1991 the Federal Maritime Commission ("Commission" or "FMC") published an Interim Rule to implement the Non-Vessel-Operating Common Carrier Amendments of 1990 ("1990 Amendments") (56 FR 1493).[1] This Interim Rule, which also served as a Proposed Rule, was originally scheduled to go into effect on February 14, 1991. However, in response to numerous comments, the Commission, pursuant to section 16 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1715, granted a 60-day temporary exemption from all the requirements of the 1990 Amendments and deferred the effective date of the Interim Rule from February 14, 1991 to April 15, 1991. Subsequently, on April 3, 1991, the Commission published a clarification of the Interim Rule and stayed one provision of the Rule (§ 580.5(d)(25)(i)) until a final rule was issued ("Clarification Order").

The 1990 Amendments modify provisions of the 1984 Act by establishing certain requirements applicable to the activities of NVOCCs in the oceanborne foreign commerce of the United States. New section 23 of the 1984 Act requires NVOCCs to obtain a bond to ensure their financial responsibility for damages, reparations or penalties; requires designation of a resident agent if the NVOCC is domiciled abroad; and permits suspension or cancellation of NVOCC tariffs for failure to maintain a bond or designate a resident agent. New section 10(b)(14) of the 1984 Act makes it a prohibited act for a common carrier knowingly and willfully to accept cargo from or transport cargo for the account of an unbonded or untariffed NVOCC. New section 10(b)(15) of the 1984 Act makes it a prohibited act for an ocean common carrier knowingly and willfully

[1] Section 710 of Pub. L. No. 101-595.

to enter into a service contract with an unbonded or untariffed NVOCC.

The Interim/Proposed Rule adds a new part 583 to title 46 of the Code of Federal Regulations, and amends two existing parts—580 and 581. New part 583 establishes various requirements applicable solely to NVOCCs. It requires that all NVOCCs operating in the foreign commerce of the United States, except those engaged exclusively in transporting used military household goods and personal effects, obtain a surety bond of $50,000. In addition, NVOCCs not domiciled in the United States must designate a resident agent for service of process. If that resident agent cannot be served, the Interim/Proposed Rule provides alternative service on the Secretary of the FMC. The Rule further provides procedures for the suspension or cancellation of an NVOCC's tariff for failure to maintain a bond or resident agent. Appendix A to part 583 contains Form FMC–48, the new bond form for NVOCCs.

Part 580 of the Commission's rules covers the publishing and filing of tariffs by common carriers in the foreign commerce of the United States. The Interim/Proposed Rule amendments to this part apply to both NVOCCs and common carriers. NVOCCs are required to state in their tariffs that they have filed a bond with the Commission, and to identify the bond number and the surety issuing the bond. NVOCCs not domiciled in the United States must also state the name and address of their resident agent. Common carriers are required to ascertain the identity and status of a shipper tendering cargo and to state same on their bills of lading or other records of carriage.[2] If a shipper is identified as an NVOCC, a common carrier must obtain documentation indicating that the NVOCC has complied with its tariff and bonding requirements. The documentation to satisfy this requirement is left to the discretion of the carrier, although a copy of an NVOCC's tariff rule 24 is one acceptable means.

Part 581 contains the FMC rules relating to service contracts. The Interim/Proposed Rule amendments prohibit an ocean common carrier or conference from entering into a service contract with an NVOCC, unless that NVOCC is tariffed and bonded. Further, it requires a shipper party to a service contract to certify its status and, if it is an NVOCC, to provide proof of compliance with the tariff and bond provisions. Again, a copy of the NVOCC's tariff rule 24 is deemed acceptable.

[2] This latter provision was stayed by the Commission in its Clarification Order.

II. Comments and Discussion

The Commission has received 65 comments on the Interim/Proposed Rule. The commenters, which are listed in Attachment A, raise concerns with almost all provisions of the Rule. Rather than address each comment separately, we will instead discuss certain general areas of concern, mentioning specific commenters only where appropriate. Any comment not specifically addressed has nevertheless been considered and deemed to be irrelevant, inconsequential or otherwise without merit.

A. Alleged Effects of 1990 Amendments on Shippers' Associations

Streamline urges the Commission to adopt a new interpretation and statement of policy concerning the effects of the 1990 Amendments on shippers' associations. This proposed interpretation would state that: (1) Shippers' associations are not common carriers as defined by section 3(6) of the 1984 Act and can use tariff rates and enter into service contracts; and (2) shippers' associations are not required to file tariffs with the Commission and are not subject to the bonding or resident agent requirements of the 1990 Amendments. Streamline contends that such a policy statement is needed to address concerns raised by overseas offices of some steamship companies and merely clarifies the new law and codifies prior statements of the Commission.

Streamline further suggests that the final rule contain language reflecting the Commission's Clarification Order. This would include a statement that shippers' associations need only disclose their NVOCC members when executing a certification for a service contract, and that NVOCC members that join a shippers' association after a service contract is executed can ship under the contract but must certify their status at the time of the first shipment.[3] Streamline would also clarify in the rule that the periodic resubmission of an NVOCC's legal status be every six months. In addition, Streamline would amend proposed section 583.3(a) to reflect that only common carriers are subject to the statute's prohibition against accepting cargo from NVOCCs not in compliance with the 1990 Amendments.

We are not adopting the statement of policy advanced by Streamline. The alleged basis for the statement, concerns of some overseas offices of ocean carriers, is not convincing. Moreover, a statement that a shippers' association is not an NVOCC merely begs the question. As the Commission has pointed out previously in this proceeding, it is not what an entity calls itself that determines whether it is or is not an NVOCC, but rather the way it conducts its activities. In this regard, we note that the Commission does not certify or otherwise pass, in advance, on the *bona fides* of a shippers' association.

Several of Steamline's proposed clarifications are rendered moot by our treatment of other sections of the Proposed Rule. However, consistent with one of Streamline's other suggestions, we have modified § 581.11 by adding a new paragraph (c). This provides that an NVOCC joining a shippers' association during the term of a service contract and entitled to receive service under the contract must first provide an ocean common carrier or conference with proof that it is tariffed and bonded.

[3] LEP, an NVOCC, also raised concerns about whether all members of a shippers' association must be revealed to an ocean carrier.

B. Challenges by Foreign Forwarders/NVOCCs to Tariff Filing and Bonding Requirements

Generally identical comments received from a large number of foreign-based forwarders, assert that filing tariffs and obtaining a bond will be very costly for them and that these costs ultimately will be passed on to their shipper customers. They also contend that the 1990 Amendments are unclear as to who is covered. These commenters further allege that using carriers as an enforcement arm may damage the relationship between carrier and forwarder. Lastly, these forwarders threaten to divert their cargoes through Canadian ports if the 1990 Amendments are not repealed.

Whatever the merits of the commenters' objections to tariff filing and bonding, the Commission cannot amend or repeal the requirements of the 1990 Amendments. Threats to divert cargoes through Canada do not alter this fact. Moreover, as indicated below we do not believe that the coverage under these Amendments is in any way vague or unclear. The 1984 Act contains a definition of both "common carrier" and "NVOCC." The Commission has further indicated in this proceeding the kinds of activities an NVOCC conducts. Anyone operating as an NVOCC should be able to determine its status with a reasonable degree of certainty.[4]

[4] See also, our discussion infra at pp. 16–18.

C. Suggested Exemption From NVOCC Tariff Filing Requirements

DOT urges the Commission to proceed to exempt NVOCCs from any tariff filing requirement as soon as practicable. DOT alleges that tariff systems are costly to initiate and maintain and that tariff filing can impede competition. Effective regulation by the FMC allegedly will not be impaired because ocean common carriers will still have to file their tariffs and shippers will therefore be able to determine whether NVOCC rates are toe high. DOT also claims that tariff filing affects small NVOCCs more heavily and that such firms make up a large proportion of the NVOCC community. It suggests that NVOCC tariff filing may impair U.S. commerce by forcing shippers to use less efficient routes (*e.g.*, Canada or Mexico) or boycott complying NVOCCs.

Several NVOCCs have also suggested that the Commission exempt NVOCCs from tariff filing.[5] Another NVOCC, Distribution Services, Ltd., suggests that the Commission vigorously enforce the tariff filing requirement or alternatively omit tariff filing for all common carriers.[6]

The proposed exemption of NVOCCs from tariff filing is beyond the scope of this rulemaking. Moreover, the proper method of seeking the relief requested by DOT would be a petition for exemption pursuant to section 16 of the 1984 Act, 46 U.S.C. app. 1715, and not proposed as a comment in a rulemaking proceeding. Section 16 expressly provides that "(n)o order or rule of exemption * * * may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States." It is important to note that an exemption can only be granted if the Commission affirmatively finds "* * * that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce."

The Commission has since received a Petition for Exemption from the NVOCC Tariff Filing Requirements Under the Shipping Act of 1984 submitted by the International Federation of Freight Forwarders Associations and several individual NVOCCs. The Commission has determined to publish Notice of this petition in the **Federal Register** and will solicit comment thereon.

D. Exemption for NVOCCs of Used Military Household Goods

Section 583.3(c) of the Interim/Proposed Rule exempts any person which exclusively transports used military household goods and personal effects from the bonding requirement of the 1990 Amendments. As the Commission noted in its Clarification Order, Congress intended that such NVOCCs be exempted from the requirements of the 1990 Amendments. See H.R. Rep. No. 785, 101st Cong., 2d Sess. 4 (1990). The Commission further stated, however, that anyone believing that a reexamination of the exemption was warranted could submit comments during the course of this proceeding. Clarification Order at 23, 24.

TAAFLO, an organization of U.S.-flag vessel operators, fully supports a continued exemption. It states that the Commission has properly implemented Congress' intent. On the other hand, ACT, an agent for household goods forwarders, suggests that all NVOCCs should be subject to the same requirements. It alludes to certain problems with a DOD shipping program caused by the financial failure of several unscrupulous and insolvent forwarders. ACT appears to be particularly concerned about the effect of such failures on the agents for household goods forwarders, many of whom have been damaged by the demise of primary forwarders. ACT also believes that regulation of all household goods forwarders by the FMC would remove the Military Traffic Management Command ("MTMC") from a conflict of interest position.

DOD states that MTMC is its agent for personal property movements. It advises that MTMC's International Through Government Bill of Lading Program requires household goods forwarders/NVOCCs to submit performance bonds, in favor of DOD, in the amount of either $100,000 or 2.5 percent of the carrier's prior year's revenue from DOD shipments. DOD points out, however, that this performance bond is only intended to protect its interests and does not cover agents of the forwarder/NVOCC or any other underlying parties with whom the forwarder/NVOCC may have contracted to provide services. It states that recently, MTMC-approved forwarders/NVOCCs failed to deliver thousands of shipments leaving the agents for these forwarders/NVOCCs unprotected against loss.

DOD, therefore, suggests several changes to the Proposed Rule. First, it urges that the phrase "used military household goods and personal effects" in § 583.3(c) be changed to read "used household goods and personal effects for the account of the Department of Defense." It believes that use of the term "military" could be interpreted as limiting the scope of the provision to only shipments for military members of the Army, Navy, Air Force, and Marine Corps. DOD explains that MTMC, on behalf of the uniformed services, also ships household goods and personal effects for DOD civilians employed overseas and that these shipments are presently covered by the MTMC performance bond.

DOD also requests that the Commission clarify in any final rule that DOD would not be prohibited from requiring bonds from persons who exclusively transport used household goods and personal effects for the account of DOD. DOD believes that the current wording of § 583.3(c) could lead to the interpretation that DOD itself cannot require performance bonds. DOD states that Congress expected that it would continue to require NVOCC bonding for the NVOCCs carrying its household goods shipments. Lastly, DOD urges that the FMC seek legislative relief so that agents and others providing services on behalf of MTMC-approved NVOCCs are protected by an FMC-required bond.

DOD's two suggested amendments to the Proposed Rule have merit and will be accommodated in the Final Rule. Section 583.3(c) has been amended so that household goods and personal effects of civilian DOD employees are clearly included within the exemption. This section has been further amended to specifically state that DOD can continue to require a bond for its shipments. DOD's other suggestion, that the law be amended to include agents of MTMC approved NVOCCs within the scope of the 1990 Amendments' bonding requirement may have merit. However, any such action is outside the scope of this rulemaking proceeding and, moreover, may be more appropriately advanced by others more directly affected by the perceived problem.

E. Tariff Rule No. 25

Section 580.5(d)(25) of the Interim/Proposed Rule contains certain provisions concerning a common carrier's acceptance of cargo from an NVOCC, including a requirement that such carriers publish a rule (Rule No. 25) in their tariffs concerning this subject. Two commenters have raised concerns with this requirement.

BCL et al. contend that § 580.5(d)(25) does not state what must be contained

[5] Orion Marine Corporation, LEP, Medallion Shipping Lines, and West Forwarding Services, Inc.

[6] Nine letters were received by the Commission after the comment period had expired. Eight supported DOT's position and one opposed it. These letters have been placed in the correspondence file of this docket.

in the new Rule No. 25 carriers would be required to include in their tariffs. They point out that all the preceding paragraphs in this section specifically indicate what the corresponding tariff rule must contain.[7] NEC also contends that it is unclear whether VOCCs must publish a tariff rule and, if so, what its contents must be. NEC believes that there is no valid regulatory purpose to be served by such a requirement, nor is it necessitated by the 1990 Amendments. NEC notes that the FMC's Clarification Order stated that VOCCs are free to accept other means to satisfy themselves that a known NVOCC is in compliance with the statutory requirements. NEC questions what a tariff rule would state under such circumstances.

NEC argues that the purpose of tariffs is to describe the services offered and the rates and charges applicable to those services. It does not believe that tariffs should recite provisions of the Shipping Act or Commission rules, or describe services not offered. Lastly, NEC contends that there is no need for an NVOCC tariff rule because of the new prohibited acts added as a result of the 1990 Amendments. If the Commission rejects NEC's position, NEC proposes an optional tariff rule.

Part of the confusion surrounding § 580.5(d)(25) may be due to a combination of its subject matter and its placement. Proposed paragraph (d)(25) did impose several substantive requirements on common carriers. As discussed below, the requirements that remain have been moved to part 583, which now contains all general rules pertaining to the 1990 Amendments. However, we believe that a carrier tariff rule devoted to acceptance of NVOCC cargo may still be warranted. Specifically, if a common carrier is going to adopt a procedure for ascertaining NVOCC compliance other than the two specified in new §§ 583.7(b) (1) or (2), then that procedure must be set forth in the carrier's rule 25.

F. Co-loading by NVOCCs

In our Clarification Order, we addressed the issue of co-loading by NVOCCs as follows:

> In a legitimate co-loading situation otherwise governed by the Commission's tariff rules, 46 CFR 580.5(c)(14), the only status that must be declared to the ocean common carrier and the only compliance that must be verified is that of the master co-loader who appears as "shipper" on the ocean carrier's bill of lading. Ocean carriers would not need to verify compliance of other NVOCCs whose cargo may be included in the master co-loader's shipment. However, the master co-loader, as a common carrier, would have its own obligation to verify the compliance of subordinate co-loading NVOCCs who tender their own cargo pursuant to the master's tariff. *See* § 580.5(d)(25) of the Interim Rule.

Clarification Order at 21. NCBFAA generally agrees with this discussion. However, it suggests that, to the extent VOCCs are relieved from any shipper identification responsibilities, NVOCCs serving as master co-loaders should be accorded identical treatment. NCBFAA contends that master co-loading NVOCCs should have the same verification responsibilities as do VOCCs.

Streamline, on the other hand, believes that the Commission should require "self-certification" to VOCCs from all NVOCCs participating in a co-loaded shipment. Streamline contends that the Commission's Clarification Order has created a major loophole in the new law. Streamline posits the scenario of one NVOCC complying with the law and several other non-complying NVOCCs co-loading through its facilities. Under such an arrangement, any judgment against the one complying NVOCC allegedly could easily exceed the $50,000 bond. Streamline recommends, therefore, that with respect to service contracts, at the time of signing, an NVOCC shipper should identify and provide certifications for all other NVOCCs with whom it has co-loading agreements. In addition, Streamline suggests that for both tariff and service contract movements, NVOCCs should be required to state whether a shipment is co-loaded with other NVOCCs and, if so, to provide compliance certifications with respect to those other NVOCCs.

NCBFAA's concerns are unwarranted. The fact is that NVOCCs and VOCCs are *presently* treated equally under § 580.5(d)(25). This is because this paragraph relates to "common carriers" and not solely vessel operating common carriers. This continues to be the case with new § 583.7; it also applies to all common carriers. As a common carrier, therefore, an NVOCC will have to comply with all the requirements applicable to common carriers that are adopted in the Final Rule.

We see no compelling reason to expand the carrier certification requirement beyond a master co-loader to its subordinate NVOCCs. If the hypothetical scenario presented by Streamline becomes a reality and frustrates the intent of the 1990 Amendments, we will address it at that time. However, we would like to reemphasize that our co-loading rules apply only to "the combining of cargo" by two or more NVOCCs, in a single shipment.[8] Moreover, these rules do not in any way give one NVOCC a license to use another NVOCC's service contract for its shipments. *See California Shipping Line Inc.* v. *Yangming Marine Transport Corp.*, 25 S.R.R. 1213 (1990).

G. Definition of NVOCC

Many of the European NVOCCs filing similar comments contend that the concept of an NVOCC is foreign to them and that the statutory and regulatory definitions of NVOCC do not provide them sufficient guidance. TWRA likewise claims that the statutory definition of NVOCC is vague and difficult to apply. DOT has also requested that the Commission clarify more precisely the functions or services that distinguish NVOCCs from other intermediaries. DOT expresses concern about the examples of NVOCC activity contained in the Supplementary Information to the Interim/Proposed Rule, contending that many of these functions can also be performed by non-NVOCCs, and thus their value is diluted.

IANVOCC, on the other hand, submits that the 1990 Amendments are clear as to which companies are affected and that a "working definition" of "NVOCC" is not needed. IANVOCC states that, at least since 1952, the Commission has clearly indicated what an NVOCC does, citing *Bernhard Ulmann Co.* v. *Porto Rican Express Co.*, 3 F.M.B. 771 (1952), and *Common Carriers by Water*, 6 F.M.C. 245 (1961). It explains that NVOCCs provide transportation for hire by water and assume responsibility or have liability imposed by law for the safe transportation of cargo shipments.

The North Europe Conferences suggest that there is a readily available litmus test by which to determine whether someone is acting as an NVOCC:

> A person purchasing transportation service from a VOCC and offering such service for resale to other persons is an NVOCC.

NEC claims that its test covers VOCC services under tariffs, service contracts, and excepted commodities. NEC states that the test covers resale by NVOCCs to other NVOCCs, shippers'

[7] Section 580.5(d) provides:

> Specific tariff rules shall be published to govern each of the following subjects and shall be designated in all tariffs by the numbers and headings specified below. In the event that a specified rule does not apply to the service offered, the rule number and heading shall be published with a statement that the rule is not applicable. For example: Rule No. 15. Open Rates. Not Applicable.

[8] See 46 CFR 580.5(c)(14).

associations, other middlemen and shippers. NEC contends that its test can be easily understood by any business person in the world.

The Commission has already, within the context of this proceeding, given the shipping public more than adequate guidance as to what constitutes an NVOCC. In the Supplementary Information to the Interim Rule, we advised that:

> As common carriers, NVOCCs hold themselves out to the public to provide transportation by water between the United States and foreign countries, utilizing vessels operating on the high seas. NVOCCs normally enter into affreightment agreements with their underlying shippers, issue bills of lading or equivalent documents, and assume full responsibility for the shipments they handle, from point of origin to point of destination.

We additionally stated that an intermediary's conduct, and not what it labels itself, will be determinative of its status. Subsequently, in our Order Denying Request for Stay we stated that:

> The concept of an NVOCC is not new. It has been part of FMC regulatory law for some forty years. As far back as 1952 the Federal Maritime Board found a non-vessel operator to be a common carrier by water. *Bernhard Ulmann Co., Inc.* v. *Porto Rican Express Co.*, 3 F.M.B. 771 (1952). The 1984 Act's definition of NVOCC merely codified that term as it had been interpreted by case law and was understood in the ocean transportation industry. We therefore find it difficult to believe that anyone serious about complying with our laws and regulations will have difficulty doing so.

We will not, therefore, adopt a definition of NVOCC different from that contained in section 581(d) of the Rule and section 3(17) of the 1984 Act. In this regard, however, we do note that the litmus test proffered by NEC does appear to encompass someone who is acting as an NVOCC and would appear to be subsumed in the statutory definition. The focus of this test is on someone who purchases and resells transportation services. It is not intended to include someone acting solely as a broker or consolidator.

H. Bond Form

Appendix A to part 583 contains Form FMC–48, the bond form required of all NVOCCs subject to the 1984 Act. This form was prescribed pursuant to authority in the 1990 Amendments. Several commenters have suggested amendments to this bond form. Intercargo contends that, because the bond establishes "near-absolute liability" for the surety, it is only fair that a surety receive notice of any potential claims at the earliest possible date. Allegedly, only then will a surety be able to protect its interests by limiting additional liability (through termination) or pursuing possible subrogation against the NVOCC. Intercargo suggests, therefore, that the Commission or a complainant/plaintiff provide notice to a surety of the initiation of an action against an NVOCC.

IANVOCC would amend the bond form so that it can only be invoked against NVOCC transportation-related activities that remain unresolved after a judgment in a court of law where the NVOCC had the right to be represented by an attorney. ITT would limit such amendment to judgments where the NVOCC had the opportunity to be represented by an attorney. In support of this position, ITT raises the specter of abuses in small claims courts distant from an NVOCC's place of business.

ITT also suggests that the bond form be amended by adding the words "directly involving cargo moving on the Bill of Lading of the involved NVOCC" after "arising from its transportation-related activities." Such a narrowing is said to be necessary to avoid unlimited liability. Transeas would further limit coverage of the bond to judgments obtained in the United States and to "ocean transportation-related activities" rather than simply "transportation-related activities." It states that, like many other NVOCCs, it is part of a larger company which conducts other transportation-related activities—*e.g.*, customs brokerage and air freight.

The language in the bond form limiting the bond to an NVOCC's "transportation-related activities" tracks the express language of the 1990 Amendments. There does not appear to be any sound basis or reason for otherwise narrowing the scope of the bond. The bond covers the transportation-related activities of an NVOCC when acting as an NVOCC. As Congress has indicated, the bond is intended to "* * * be available to pay any judgment for damages arising out of an NVOCC's activities as an ocean common carrier providing ocean transportation services." H.R. Rep. No. 785, 101st Cong., 2d Sess. 3 (1990) (emphasis supplied). To the extent that someone who operates as an NVOCC also provides non-NVOCC services, those services would not be covered by the bond. Likewise, if a corporate affiliate conducts some other non-NVOCC activities, those services would not be covered under the bond. Nor do we believe that we can limit the bond to only judgments obtained in the United States. The bond is available to "pay any judgment for damages" against an NVOCC, and is not limited to only conduct by an NVOCC in this country. See section 23(c) of the 1984 Act.

There is no need to limit the bond to judgments where an NVOCC had an opportunity or right to representation. Generally, no judgment will be issued in any court of law, whatever its level, unless the NVOCC is first properly served with notice of the action against it. Similarly, we see no need to modify the bond form so that the surety must be notified of all complaints or penalty proceedings. If a surety desires notice of such actions against an NVOCC, it could probably require such notice in a separate agreement outside the standard bond form.

I. NVOCC Bond Amount

Section 23(a) of the 1984 Act permits the Commission to determine an amount for an NVOCC bond satisfactory to insure the financial responsibility of that carrier, but in any event not less than $50,000. As a result, § 583.4 of the Interim/Proposed Rule requires every NVOCC to file a valid surety bond in the amount of $50,000. Several commenters question the equity of requiring a single bond amount for all NVOCCs regardless of their size or the amount of business they engage in. One suggests that the amount of the bond should be proportionate to the business generated by an NVOCC, while another recommends that the amount of the bond should be commensurate with the size of an NVOCC's potential obligations to shippers and carriers. NEC would set the bond level at ten percent of the annual gross revenues earned by an NVOCC for services it provides pursuant to a tariff on file with the Commission, subject to a minimum of $50,000 and a maximum of $2,000,000.

One ocean freight forwarder urges that licensed and bonded forwarders not be required to obtain an additional bond if they also conduct NVOCC operations. PCC suggests instead that NVOCCs and ocean freight forwarders should be permitted to combine the face amounts of their respective bonds into a single bond. NCBFAA also requests that the Commission clarify that NVOCCs operating from multiple offices need only have one bond.

The surety bond requirement contained in § 583.4(a) is directed only toward an NVOCC. The number of offices an NVOCC may have is irrelevant to this requirement and, therefore, only one bond is required, provided that the offices are not separately incorporated. As for permitting ocean freight forwarders to operate as NVOCCs without an

additional NVOCC bond, the Commission previously addressed this issue in its Clarification Order, stating:

> The Commission cannot at this juncture permit the combining of ocean freight forwarder and NVOCC bonds. Each bond is intended to cover separate activities of what are generally separate entities. * * * The users of these services are also in two distinct classes. Besides being contrary to the clear language of the statute, inasmuch as both the freight forwarder provision and the NVOCC provision require separate bonds for separate activities, any attempt to allow one bond to cover both activities could seriously undermine the protection such bonds afford.

We see no reason to alter this position now. Nor do we believe that it would be advisable to permit the combining of an NVOCC bond and an ocean freight forwarder bond into a single, cumulative bond. Such a course of action would create significant monitoring and enforcement problems for the Commission without creating any particular benefits for the industry.

While NVOCCs may differ in size, net worth, extent and quality of service, experience, etc; any attempt to arrive at a different method for determining a bond amount, at this time, may create more problems than it solves. For example, exactly how will an NVOCC's potential liability be measured? The annual gross revenues of an NVOCC for one year may bear no relationship to revenues earned in a future year. In addition, one could argue that as an NVOCC grows, its ability to be responsible for its financial obligations also increases. At this juncture, we believe that it is best to obtain experience under the existing bond amount before considering any changes to it. We will then be in a better position to judge whether any other method of determining a bond amount is desirable or practicable.

J. Shipper Status Declaration

Section 580.5(d)(25)(i) of the Interim/Proposed Rule states:

> (25) *Certification of shipper status and rules applicable to acceptance of cargo for the account of non-vessel-operating common carriers (NVOCC).*
>
> (i) Every common carrier accepting or transporting cargo for the account of a shipper or shippers' association shall ascertain the identity and status of the shipper tendering the cargo, *e.g.*, owner of the cargo, shippers' association, non-vessel-operating common carrier or specified other designation. The common carrier shall state the shipper's status in a clear and legible manner in the shipper identification box on its bill of lading, waybill, or other substitute record of carriage.

A somewhat similar requirement applies to service contracts, although that provision (§ 581.11(a)) requires the shipper contract party to certify its status on the signature page of the service contract. In response to several emergency comments, the Commission stayed the effectiveness of § 580.5(d)(25)(i) until a final rule is adopted in this proceeding.

Many of the commenters perceive § 580.5(d)(25)(i) as imposing enforcement obligations on ocean common carriers not contemplated or required by the 1990 Amendments. They argue that the 1990 Amendments are directed at the conduct of NVOCCs only, and that carriers are simply prohibited from transporting cargo for non-complying NVOCCs. One commenter maintains that the Commission would need specific statutory authority before it could alter or regulate the contents of a carrier's bill of lading. Others raise the possibility that requiring a shipper status declaration on a bill of lading could have unforeseen consequences on other commercial documents and transactions. Votainer contends that shipper status determinations are made even more difficult because the ownership of cargo can change during the course of a shipment. Some commenters note that there are hundreds of thousands of bills of lading issued in any given year, and that recording a status declaration on each would be extremely costly, duplicative, and otherwise burdensome. It is argued that in many instances, carriers and shippers do not engage in direct negotiations, but rather, relevant shipping documents, including bills of lading, are prepared by third parties.

Several commenters question the regulatory purpose or need for the shipper status declaration. They also question the effectiveness of the system inasmuch as it relies on the voluntary admission of persons most likely to prevaricate, *i.e.*, non-complying NVOCCs. TWRA contends that it is pointless to have false status declarations on bills of lading. At the most, many argue that all that should be required is a statement that the shipper is or is not an NVOCC. Other status designations of shippers are allegedly immaterial to the purposes of the 1990 Amendments. If a shipper status declaration is deemed important, TWRA suggests that carriers simply maintain a record of such declarations periodically updated.

DOT also contends that the procedure set up by § 580.5(d)(25)(i) could potentially result in harm or abuse. It suggests that ocean common carriers may be tempted to curtail their dealings with NVOCCs as a class and that NVOCCs may themselves seek to avoid problems by using Canadian or Mexican ports.

We have determined to delete the shipper status declarations requirement originally proposed in § 580.5(d)(25)(i) of the Interim Rule. Upon further consideration, having each shipper state its status on every bill of lading appears to be of questionable regulatory utility. Moreover, removing such a requirement should significantly decrease the burdens of these regulations, without decreasing their overall effectiveness.

However, we continue to believe that a shipper certification requirement for service contracts will produce regulatory benefits including aiding the Commission's enforcement efforts without being unnecessarily burdensome. Unlike bills of lading, which number in the hundreds of thousands per year and are located all over the world, service contracts are required by statute to be filed with the Commission and number approximately 6,500 per year. The Commission, therefore, has the opportunity to closely monitor all service contracts to ensure that they are not improperly used by NVOCCs not in compliance with the Act. The Final Rule will therefore require a service contract shipper to state whether it is: (1) A beneficial owner of cargo; (2) a shippers' association; (3) an NVOCC; or (4) some other designation.

K. Proof of NVOCC Compliance With Statutory Requirements

If a shipper tendering cargo is known by the common carrier to be an NVOCC, then § 580.5(d)(25)(ii) of the Interim/Proposed Rule requires that carrier to "* * * obtain documentation that the NVOCC has a tariff and a bond as required by sections 8 and 23 of the Act before the common carrier accepts or transports cargo for the account of the NVOCC." This provision further states that "(a) copy of the tariff rule published by the NVOCC and in effect under § 580.5(d)(24) may be accepted by the common carrier as documenting the NVOCC's compliance with the tariff and bonding requirements of the Act." Carriers that comply with this procedure are absolved from liability under section 10(b)(14) of the 1984 Act, unless a carrier "* * * had reason to know such certification or documentation of NVOCC tariff and bonding was false."

Several commenters have suggested that the Commission should establish a standard practice with respect to common carrier scrutiny of NVOCC compliance. This would provide useful guidance as to what the Commission

considers adequate and at the same time would avoid *ad hoc*, arbitrary procedures. On the other hand, certain carrier interests have proposed that the Final Rule should make clear that carriers can avoid liability by other means and that the obtaining documentation requirement is merely illustrative of such other means. The Japan Conferences would have the Commission expressly broaden the "safe harbor" protection provided by § 580.5(d)(25)(iii) to other methods of assuring NVOCC compliance. If the "documentation" requirement is retained, TWRA contends there is a conflict as to whether a carrier need simply "review" a copy of the NVOCC's tariff rule or must obtain actual documentation that the NVOCC is tariffed and bonded. If a carrier has reason to suspect that a shipper is an NVOCC, IANVOCC would require that it obtain a copy of the bond and the title page of the NVOCC's tariff in addition to a copy of rule 24.

Several alternatives to the documentation requirement have also been advanced. ANERA et al. suggest that NVOCCs could certify that they are tariffed and bonded on a separate document, provided semi-annually to carriers. Alternatively, these conferences propose that such a certification be included as a stamp on bills of lading. Others have suggested that the Commission assign a five-digit reference number to each NVOCC that files a tariff and bond. This allegedly would be consistent with the Commission's present treatment of ocean freight forwarders. One commenter urges the Commission to establish a 24-hour telephone line, accessible through a modem, that would contain tariff and bond data.

The most widely endorsed alternative to the documentation requirement is a Commission published list of NVOCCs who are tariffed and bonded or a list prepared by a commercial service. A variant to this proposal is a Commission list of non-complying NVOCCs. The South/Central American Conferences note that the Commission has the responsibility for ensuring compliance with the 1990 Amendments and contend that the Commission should consequently be responsible for informing the public. They submit that a Commission list would be consistent with one of the goals of the Merchant Marine and Fisheries Committee—protecting the users of NVOCC services. Streamline also notes that shippers, and not just carriers, have a substantial interest in identifying NVOCCs who are in compliance with the Act. NEC submits that if the Commission publishes a list, the work will be performed once. On the other hand, NEC believes that if the Commission leaves a vacuum in this area, multiple persons will provide fragmented and perhaps duplicative services.

We believe that the simplest and easiest method of obtaining proof of NVOCC compliance is through a Commission list of all NVOCCs that are tariffed and bonded. The FMC's Bureau of Tariffs, Certification and Licensing now has the ability to provide such information from its database. The Commission will, therefore, provide an accurate list of complying NVOCCs on a periodic basis. Private vendors will be free to disseminate the information on the list to those requesting it. Carriers are not required to consult the list. They may review a copy of an NVOCC's tariff rule 24. If a common carrier uses either method, it will be deemed to have met its statutory obligations. Carriers remain free to require some other method of proving that an NVOCC is in compliance. However, if they do so, they must specify in their tariffs the procedures they will apply, and then apply them on a uniform, nondiscriminatory basis.

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental jurisdictions.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072-0053. Public reporting burden for this collection of information is estimated to average 113 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

List of Subjects

46 CFR Part 583

Freight; Maritime carriers; Rates; Reporting and recordkeeping requirements; Surety bonds.

46 CFR Part 580

Cargo; Cargo vessels; Freight; Exports; Harbors; Imports; Maritime carriers; Rates; Reporting and recordkeeping requirements; Surety bonds; Water carriers; Water transportation.

46 CFR Part 581

Freight; Maritime carriers; Rates; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 8, 10, 11, 12, 13, 17 and 23 of the Shipping Act of 1984, 46 U.S.C. app. 1710, 1709, 1710, 1711, 1712, 1716 and 1722, the interim rule amending chapter IV of title 46, Code of Federal Regulations, which was published at 56 FR 1493 on January 15, 1991, is adopted with changes as follows:

1. Part 583 is revised to read as follows:

PART 583—BONDING OF NON-VESSEL-OPERATING COMMON CARRIERS

Sec.

Appendix A—Non-Vessel-Operating Common Carrier (NVOCC) Bond Form

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1707, 1709, 1710–1712, 1716 and 1722.

§ 583.1 Definitions.

In this part:

(a) *Act* means the Shipping Act of 1984 (46 U.S.C. app. 1701 et seq.).

(b) *Common carrier* means a person holding itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker. As used in this paragraph, 'chemical parcel-tanker' means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(c) *Commission* means the Federal Maritime Commission.

(d) *Non-vessel-operating common carrier or NVOCC* means a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

(e) *Ocean common carrier* means a vessel-operating common carrier.

(f) *Person* includes individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

§ 583.2 Scope.

This part implements the Non-Vessel-Operating Common Carrier Amendments of 1990, Public Law 101–595, section 710.

§ 583.3 Proof of financial responsibility, when required.

(a) Except as provided in paragraph (c) of this section, no person shall provide transportation as a non-vessel-operating common carrier unless a surety bond covering such NVOCC has been furnished to the Commission.

(b) Where more than one entity operates under a common trade name, a separate bond is required for each corporation or person separately providing transportation as a non-vessel-operating common carrier.

(c) Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense is not subject to the requirements this part.

§ 583.4 Surety bond requirements.

(a) Prior to the date it commences common carriage operations, every non-vessel-operating common carrier shall establish its financial responsibility by filing with the Commission, simultaneously with its tariff, a valid surety bond on Form FMC–48, in the amount of $50,000. Bonds must be issued by a surety company found acceptable by the Secretary of the Treasury.

(b) Surety bonds shall be submitted to the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Copies of Form FMC–48 may be obtained from the Commission's Bureau of Tariffs, Certification and Licensing at the address listed above, or from any of the Commission's district offices located in New York, NY, New Orleans, LA, San Francisco, CA, Hato Rey, PR, Los Angeles, CA, Miami, FL and Houston, TX.

§ 583.5 Resident agent.

(a) Every non-vessel-operating common carrier not domiciled in the United States shall designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process, including subpenas.

(b) If the designated legal agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the legal agent for service of process. Any person serving the Secretary must also send to the NVOCC by registered mail, return receipt requested, at its address published in its tariff on file with the Commission, a copy of each document served upon the Secretary, and shall attest to that mailing at the time service is made upon the Secretary.

(c) Service of administrative process, other than subpenas, may be effected upon the legal agent by mailing a copy of the document to be served by certified or registered mail, return receipt requested. Administrative subpenas shall be served in accordance with § 502.134 of this chapter.

(d) Designations of resident agent under paragraphs (a) and (b) of this section and provisions relating to service of process under paragraph (c) of this section shall be published in the NVOCC's tariff in accordance with § 580.5(d)(24) of this chapter.

§ 583.6 Termination of bond or designation of resident agent.

(a) Upon receipt of notice of termination of a surety bond, the Commission shall notify the NVOCC by certified or registered mail at its address published in its tariff on file with the Commission, that the Commission shall, without hearing or other proceeding, suspend or cancel the tariff or tariffs of the NVOCC as of the termination date of the bond, unless the common carrier submits a valid replacement surety bond before such termination date. Replacement surety bonds must bear an effective date no later than the termination date of the expiring bond.

(b) Upon receipt of notice of termination of a designation of resident agent, or upon receipt of alternative service of process upon the Secretary in accordance with § 583.5(b), the Commission shall notify the NVOCC by certified or registered mail, at its address published in its tariff on file with the Commission, that the Commission shall, without hearing or other proceeding, suspend or cancel the tariff or tariffs of the NVOCC effective thirty days after receipt of such notice of termination or alternative service of process upon the Secretary unless the NVOCC publishes in its tariff a replacement designation of an agent in the United States for the receipt of judicial and administrative process before such effective date of suspension or cancellation.

§ 583.7 Proof of Compliance.

(a) No common carrier may transport cargo for the account of a shipper known by the carrier to be an NVOCC unless the carrier has determined that that NVOCC has a tariff and a bond as required by sections 8 and 23 of the Act.

(b) A common carrier can obtain proof of an NVOCC's compliance with the tariff and bonding requirements by:

(1) Consulting a current list provided by the Commission of tariffed and bonded NVOCCs; or

(2) Reviewing a copy of the tariff rule published by the NVOCC and in effect under § 580.5(d)(24) of this chapter; or

(3) Any other appropriate procedure, provided that such procedure is set forth in the carrier's tariff of general

applicability as required by paragraph (d)(25) of § 580.5 of this chapter.

(c) A common carrier that has employed the procedure prescribed in either paragraph (b) (1) or (2) of this section shall be deemed to have met its obligations under section 10(b)(14) of the Act, unless the common carrier knew that such NVOCC was not in compliance with the tariff and bonding requirements.

§ 583.91 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072–0053.

Appendix A—Non-Vessel-Operating Common Carrier (NVOCC) Bond Form

Federal Maritime Commission Non-Vessel Operating Common Carrier (NVOCC) Bond (Section 23, Shipping Act of 1984)

_____, as Principal (hereinafter called Principal), and _____, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of $_____ for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

Whereas, Principal operates as an NVOCC in the waterborne foreign commerce of the United States, has an NVOCC tariff on file with the Federal Maritime Commission, and pursuant to section 23 of the Shipping Act of 1984 has elected to file this bond with the Commission;

Now, Therefore, The condition of this obligation is that the penalty amount of this bond shall be available to pay any judgment for damages against the Principal arising from the Principal's transportation related activities or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712.

This bond shall inure to the benefit of any and all persons who have obtained a judgment for damages against the Principal arising from its transportation related activities or order of reparation issued pursuant to section 11 of the Shipping Act of 1984, and to the benefit of the Federal Maritime Commission for any penalty assessed against the Principal pursuant to section 13 of the Shipping Act of 1984. However, this bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of this bond, and in no event shall the Surety's total obligation hereunder exceed said penalty regardless of the number of claims or claimants.

This bond is effective the _____ day of _____, 19____, and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by written notice to the Federal Maritime Commission at its office in Washington, DC. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any transportation related activities of the Principal after the expiration of the thirty (30) day period but such termination shall not affect the liability of the Principal and Surety for any event occurring prior to the date when said termination becomes effective.

The underwriting Surety will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against this bond.

Signed and sealed this _____ day of _____, 19____.

(Please type name of signer under each signature.)

_____
Individual Principal or Partner

_____
Business Address

_____
Individual Principal or Partner

_____
Business Address

_____
Individual Principal or Partner

_____
Business Address

_____
Trade Name, If Any

_____
Corporate Principal

_____
State of Incorporation

_____
Trade Name, If Any

_____
Business Address

_____
By

_____
Title
(Affix Corporate Seal)

_____
Corporate Surety

_____
Business Address

_____
By

_____
Title
(Affix Corporate Seal)

PART 580—[AMENDED]

2. The authority citation for part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, as 1709, 1710–1712, 1714–1716, 1718, and 1722.

3. In Section 580.5 paragraphs (d)(24) and (d)(25) are revised to read as follows:

§ 580.5 Tariff contents.

* * * * *

(d) * * *

(24) *Bonding of non-vessel-operating common carriers and legal agent for service of process.*

(i) Every non-vessel-operating common carrier (NVOCC) shall state in its tariffs on file with the Commission that it has furnished the Commission a bond in the amount required by § 583.4 of this chapter to ensure the financial responsibility of the NVOCC for the payment of any judgment for damages arising from its transportation-related activities, order for reparations issued pursuant to section 11 of the Act, or penalty assessed pursuant to section 13 of the Act. The NVOCC shall state its bond number and identify the name and address of the surety company issuing the bond.

(ii) Every NVOCC not domiciled in the United States shall state in its tariffs the name and address of a person in the United States designated under § 583.5 of this chapter as its legal agent for the service of judicial and administrative process, including subpenas. The NVOCC also shall state that, in any instance in which the designated legal agent cannot be served because of death, disability or unavailability, the Secretary, Federal Maritime Commission will be deemed to be the NVOCC's legal agent for service of process.

(iii) Service of administrative process, other than subpenas, may be effected upon the legal agent by mailing a copy of the documents to be served by certified or registered mail, return receipt requested.

(25) *Rules applicable to acceptance of cargo for the account of non-vessel-operating common carriers (NVOCCs).*

If a common carrier adopts a procedure, other than those set forth in §§ 583.7(b) (1) or (2) of this chapter, for determining whether NVOCCs for whom it wishes to transport cargo have complied with the tariff and bonding requirements of sections 8 and 23 of the Act, that procedure shall be clearly set forth in its tariff.

PART 581—[AMENDED]

4. The authority citation for part 581 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716, 1718, and 1722.

5. In § 581.3 paragraph (e) is adopted without change and is republished to read as follows:

§ 581.3 Filing and maintenance of service contract materials.

* * * * *

(e) *Service contracts with non-vessel-operating common carriers.* No ocean common carrier or conference shall execute or file any service contract in which a contract party or an affiliate of such contract party or member of a shippers' association entitled to receive service under the contract is a non-vessel-operating common carrier, unless such non-vessel-operating common carrier has a tariff and a bond as required by sections 8 and 23 of the Act and Commission regulations under parts 580 and 583 of this chapter.

6. In § 581.4 paragraph (a)(3) is adopted without change and is republished to read as follows:

§ 581.4 Form and manner.

(a) * * *

(3) On the signature page of the service contract, a certification of shipper status in accordance with § 581.11.

* * * * *

7. Section 581.11 is revised to read:

§ 581.11 Certification of shipper status.

(a) The shipper contract party shall certify on the signature page of the service contract its shipper status, e.g., owner of the cargo, shippers' association, non-vessel-operating common carrier, or specified other designation, and the status of every affiliate of such contract party or member of a shippers' association entitled to receive service under the contract. The certification shall be signed by the contract party.

(b) If the certification completed by the contract party under paragraph (a) of this section identifies the contract party or an affiliate or member of a shippers' association as a non-vessel-operating common carrier, the ocean common carrier or conference shall obtain proof that such non-vessel-operating common carrier has a tariff and a bond as required under sections 8 and 23 of the Act before signing the service contract. An ocean common carrier or conference can obtain proof of an NVOCC's compliance by consulting a current list provided by the Commission of NVOCCs in compliance with the tariff and bonding requirements or by reviewing a copy of the tariff rule published by the NVOCC and in effect under § 580.5(d)(24) of this chapter.

(c) If an NVOCC joins a shippers' association during the term of a service contract and is entitled to receive service under the contract, the NVOCC shall provide to the ocean common carrier or conference the proof of compliance required by paragraph (b) of this section prior to any shipments under the contract.

(d) An ocean common carrier or conference executing a service contract shall be deemed to have met its obligations under section 10(b)(15) of the Act upon meeting the requirements of paragraphs (a) and (b) of this section, unless the ocean common carrier or conference knew that such NVOCC was not in compliance with the tariff and bonding requirements.

By the Commission.[1]

Joseph C. Polking,

Secretary.

Attachment A

Commenters

1. Trans-Pacific Freight Conference of Japan and Japan-Atlantic and Gulf Freight Conference ("Japan Conferences").
2. Backhaus & Co.
3. Orion Marine Corporation.
4. LEP International ("LEP").
5. Philippine International Seafreight Forwarders Ass'n., Inc.
6. Trans-Atlantic American Flag Liner Operators ("TAAFLO").
7. Cargonaut.
8. Intercargo Corporation ("Intercargo").
9. F.A.R. Freight Services, Inc.
10. Harry W. Hamacher.
11. Emil Ipsen.
12. Willis Corroon Maritime Inc.
13. Phoenix International Freight Services, Ltd.
14. West Gulf Maritime Association ("WGMA").
15. Pacific Merchant Shipping Association ("PMSA").
16. Allport Freight Limited.
17. World Transport Agency Ltd.
18. Rotterdam Waterway Shipping Agency BV.
19. Peeters & Van Yperen Shipping Co. Ltd.
20. Ross & Associates.
21. Anpac International Line.
22. Distribution Services Ltd.
23. Federation Francaise Des Organisateurs Commissionnaires De Transport.
24. NAVIS Schiffarts-und Speditionsgesellschaft mbH.
25. Technotrans.
26. A. Helgeler & Co.
27. Ross Freight Company Inc.
28. Votainer Consolidation Services (U.S.A.), Inc. ("Votainer").
29. International Association of NVOCCs ("IANVOCC").
30. United States Atlantic and Gulf/Venezuela Steamship Conference; Atlantic and Gulf/West Coast South America Conference; United States/Colombia Conference; United States Atlantic and Gulf/Ecuador Conference; U.S./Central America Liner Association; Central America Discussion Agreement; United States Atlantic & Gulf/Hispaniola Steamship Freight Association; Hispaniola Discussion Agreement; United States Atlantic Gulf/Southeastern Caribbean Steamship Freight Association; Southeastern Caribbean Discussion Agreement; Jamaica Discussion Agreement; United States/Panama Freight Association; PANAM Discussion Agreement; Puerto Rico/Caribbean Discussion Agreement ("South/Central American Conferences").
31. Transpacific Westbound Rate Agreement ("TWRA").
32. National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA").
33. USA-North Europe Rate Agreement and North Europe-USA Rate Agreement ("North Europe Conferences" or "NEC").
34. Streamline Shippers' Association, Inc. ("Streamline").
35. U.S. Department of Defense ("DOD").
36. U.S. Department of Transportation ("DOT").
37. International Trade Tracking ("ITT").
38. Air & Sea International, Inc.
39. Anglia Forwarding Ltd.
40. Asia North America Eastbound Rate Agreement; Australia/Eastern U.S.A. Shipping Conference; Israel Eastbound Conference; Israel Westbound Conference; U.S. Atlantic & Gulf/Australia-New Zealand Conference; U.S. Atlantic & Gulf Western Mediterranean Rate Agreement; South Europe/U.S.A. Freight Conference; and the "8900" Lines ("ANERA et al.").
41. Carolina Freight Carriers Corporation ("Carolina").
42. CDS Line.
43. COPEX I.G.S. BV.
44. Curry Transfer & Storage Co.
45. Coirsa International, Inc.
46. EM Exmare.
47. International Container Transport, Inc.
48. Hamprecht Transport.
49. Michael J. LoPrimo & Co., Inc.
50. Medallion Shipping Lines.
51. S.E.I. Spedition GMBH.
52. TranSeas Express ("Transeas").
53. West Forwarding Services, Inc.

[1] Commissioner Quartel's dissent is attached.

54. Alaska Coast Transport, Inc. ("ACT").
55. Atlantic Container Line ("ACL").
56. BWI Transworld II, Inc.
57. JLK International.
58. NEDRAC, Inc.
59. Ocean Links International USA, Inc.
60. Rohde & Liesenfeld GmbH & Co.
61. American President Lines, Ltd. ("APL").
62. Bermuda Container Line Ltd., Great White Fleet, Ltd. and Transportation Maritima Mexicana, S.A. de C.V. ("BCL et al.").
63. Inter-American Freight Conference ("IAFC").
64. Pacific Coast Council of Customs Brokers and Freight Forwarders Association, Inc. ("PCC").
65. Wilhelmsen Lines A/S.

Commissioner Quartel's Dissent to Docket No. 91-1: Bonding of Non-Vessel-Operating Common Carriers

These final rules can, at best, be said to be indifferent to the business and economics of the industry regulated. Majority assertions of clarity and fairness notwithstanding, these final rules are, as evidenced by repeated public comments and appeals, an enigma and a sore to this nation's trading partners, and a model of anti-competitive unfairness to America's own small, legitimate, family-owned NVOCC's. The latter, unfortunately, will bear the brunt of this Commission's decision to, among other things, establish a uniform bond level—rather than to recognize through proportional bonding (as I believe it is required to do, by both law and economic common sense)—the issues of equity and competition. While the Commission argues that it needs and can wait for experience with the single level bond, it in fact has a long history of evaluating in other segments of this industry the issues of differing size, net worth, extent and quality of service, etc., as they relate to bonding.

The Commission has made a commendable attempt to relieve the burden placed by the underlying statute on a third party—the vessel-operating carriers—which requires their shouldering a portion of the FMC's own enforcement responsibilities. In my opinion, the Commission stretched the law to do so—and this Commissioner wishes they had shown the same apparent level of interest and consideration in dealing with the NVOCC's.

I also believe that the staff analysis of the cost of these rules is very seriously flawed, and thus clashes with other rules and laws designed to prevent the implementation of burdensome and unnecessary major rules such as this one. These rules will, in fact, not only have a significant economic impact on a very substantial number of small entities, but will significantly and adversely affect competition, employment, innovation, and the ability of many small US-based enterprises to compete with foreign-based enterprises in export markets.

We know that other institutions of government are not immune to the narrow vested interests of large, well-funded entities which present themselves under the guise of the larger public concern. In implementing this unfair and burdensome law, this independent agency, in my view, had latitude to better ameliorate some of the anti-competitive special interest imbalance created by the statute—for example, by requiring a proportional bond. Instead, these rules, given the glacial speed at which legislative corrections are likely to take place, more than likely sanctify the law's fundamental flaws. In this instance, the "level playing field" this law and these regulations were said to be intended to bring about is not only not level, but is now strewn with new boulders and impediments blocking the path of America's small businesses and consumers.

[FR Doc. 91-24953 Filed 10-16-91; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. 8; Notice 91-17]

RIN-2105-AB80

Standard Time Zone Boundary in the State of Indiana; Relocation of Time Zone Boundary

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: In response to a petition from the Board of Commissioners of Starke County, Indiana, DOT is relocating the boundary between Eastern time and Central time in the State of Indiana in order to place Starke County into the Eastern Time Zone. The Department finds that the change would "serve the convenience of commerce."

DATES: This change is effective at 2 a.m. c.d.t. on Sunday, October 27, 1991. This effective date and time coincide with the change from daylight saving time to standard time.

FOR FURTHER INFORMATION CONTACT: David Crawford or Robert C. Ashby, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh Street, SW., room 10424, Washington, DC 20590, (202) 366-9306.

SUPPLEMENTARY INFORMATION: .

Background

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 261), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

In 1981, at the request of the Board of County Commissioners of Starke County, one of the six northwestern counties in the Central Time Zone, DOT conducted a proceeding to consider moving Starke County from central time to eastern time. In an October 22, 1981 decision, DOT decided not to move Starke County from central time to eastern time. The Department relied on information it obtained from the Census Bureau which indicated that more commuters commuted to the Central Time Zone to work rather than to the Eastern Time Zone.

In 1986, the Department received a second request from the Board of County Commissioners of Starke County to change Starke County to eastern time and initiated a rulemaking proceeding to consider making the change. During this second proceeding, there was no new evidence offered which indicated the commuting numbers or patterns had changed since the Department's 1981 decision. Therefore, in a March 1987 decision, the Department again declined to change Starke County to eastern time. In both proceedings, DOT concluded that a change to eastern time would not serve the convenience of commerce.

The Petition for Rulemaking

The Department received a formal resolution from the Board of Commissioners of Starke County on July 6, 1990, requesting that Starke County be moved from the Central Time Zone to the Eastern Time Zone. Starke County is adjoined by Marshall County to the east, St. Joseph County to the northeast, Fulton County to the southeast and

Pulaski County to the south; all of these counties are in the Eastern Time Zone. It is adjoined by La Porte County to the north, Porter County to the northwest and Jasper County to the southwest; all of these counties are in the Central Time Zone.

Accompanying the resolution was information indicating that the requested change, if made, would serve the "convenience of commerce." In their submissions, the county representatives provided a number of examples of how the requested change, if made, would serve the convenience of commerce. In addition, they submitted letters from local banks and businesses supporting the change. Moreover, a representative of the Starke County Commissioners provided a detailed memorandum providing background information on many factors affecting life within the county.

The memorandum discussed the location and operation of financial institutions, the local economy, work patterns of county residents, business relationships outside the county, which radio and television stations can be received in the county, where popular newspapers are published, what kind of transportation services are available, school district boundaries, athletic schedules, recreation opportunities, and how health services are provided. Furthermore, DOT received a newspaper article printed in the Leader, a local daily circulated in Starke and Pulaski counties, which summarized the views of the voters of Starke County as being in favor of the change as evidenced by the primary election in May of 1990. According to the Leader and the resolution, the electorate voted 2–1 in favor of a switch to the Eastern Time Zone from the Central Time Zone. Finally, DOT received a letter from Senator Richard G. Lugar of Indiana. He expressed his opinion that transferring Starke County to eastern time would serve the convenience of commerce in the area.

Procedure for Changing a Time Zone Boundary

Under the DOT procedures to change a time zone boundary, the Department begins a rulemaking proceeding if the highest elected officials in the area make a *prima facie* case for the proposed change. DOT determined that the resolution and supporting information submitted by the petitioners made a *prima facie* case which warranted opening a proceeding to determine whether the change should be made. The Department issued a notice of proposed rulemaking (NPRM) (56 FR 13610, April 3, 1991) proposing to make the change and inviting public comment. The comment period closed on June 3, 1991. Under the DOT procedures, the General Counsel analyzes all of the comments and decides whether the change would satisfy the statutory requirements. If he believes that it would not, he ends the proceeding and leaves the time zone boundaries unchanged. If he believes that it would, he forwards his recommendations to the Secretary of Transportation, who alone has the authority to make the change.

Public Hearing and Comments

A public hearing was held in Knox, Indiana on April 4, 1991. A standing-room-only crowd filled the main courtroom of the county courthouse for the hearing, which was chaired by a representative of the Department. Forty-two (42) people commented. Twenty-seven (27) commenters favored the change, and fifteen (15) commenters opposed the change. A total of forty-one (41) written comments were submitted to the docket. Twenty-eight (28) commenters opposed the change, and thirteen (13) commenters supported the change to eastern time. For purposes of this discussion, "commenter" refers either to someone who made an oral comment at the public hearing or to someone who submitted a written comment to the docket; no distinction between the comments made at the hearing and those received in writing is necessary. The commenters addressed several major areas of life in the county that would be affected by the proposed change: school-related activities; business, industry and economics; health care and human services; legal work; farming; and other miscellaneous topics.

1. Schools

The commenters were very concerned about the effect the proposed time change would have on the schools. Over a dozen of the commenters who opposed the change discussed the effect the change would have on the schools as one of the reasons for their opposition. The concerns varied from fear that catching school buses one hour sooner in the morning would impose increased danger to children to the belief that more hours of school would be missed because of fog delays. One commenter was "deeply concerned for the safety of our children." He stated that moving to eastern standard time would result in all bus routes being completed before sunrise throughout the winter months. "Children as young as five years old waiting in total darkness along a slick county road for the school bus is a terribly disturbing thought." Another commenter who drives through areas currently on eastern time enroute to work in the morning stated that she is "always worried about the students standing by the highway waiting for the bus in the dark." She described the situation of going to work and school in the dark as "psychologically difficult."

Others disagreed as to the extent of the danger to students who would have to catch the bus one hour sooner in the morning if the change is made. One commenter stated that in the winter it is just as dark at 7 a.m. c.s.t. (the time students presently catch the bus) as it is at 6 a.m. c.s.t. (the time students will catch the bus in event Starke County is placed in the Eastern Time Zone). "It's cold, black dark in the wintertime regardless of which time the students catch the bus." Another commenter said, "Of the other 80 counties in the state of Indiana on eastern time, statistics don't show there's too much of a problem by getting picked up (during the) earlier hours."

Other commenters focused on the effect the change would have on interscholastic events. They pointed out that a change to eastern time would result in athletic and academic teams having to return home as late as 11 p.m. on weekdays when they compete with schools which are on central time. Another person noted that North Judson-San Pierre High School will be the only school in the Northwest Hoosier Conference on eastern time if the change is made; the time difference will result in its teams arriving home much later from athletic contests than they arrive presently.

One commenter has had the "experience of living in both worlds." He is affiliated presently with West Central School Corporation on eastern time, but for several years he was affiliated with the Oregon-Davis Schools on central time. From this experience, he gleaned that it will be to the students' advantage to remain on central time to prevent students from returning home late at night after competing with schools on central time. He stated, "I've seen, firsthand, kids come in dragging. They don't want to miss school. They want to be there. But they've been up late the night before—got home at eleven-thirty or midnight and had to spend an hour doing homework and didn't get a lot of sleep." Responding to this comment, another person stated, "If [the time change] is interfering with school games, start them a little early; they got the right to start them a little early."

Other commenters discussed how remaining on central time would be

more convenient for the schools because of the elements. Fog and snow cause delayed starting times during the winter months for the school systems in and around Starke County. Several commenters expressed their concern that the fog delays will be longer if the time is changed. They fear that this means students will be missing their education or that schools will have to make up more time at the end of the school year.

One commenter looked at this problem from a different angle. He discussed the special problem such delays present to families in which both parents work and to their employers. "An hour school delay is a royal pain in the neck for that family. That mother somehow has to get that kid to school an hour later. If school is canceled, they can make an arrangement, but the kid who is delayed an hour is a real problem. Our employees come an hour or hour-and-a-half late because they have to wait to take their child to school." Similar concerns were raised about snow delays. However, one commenter who works for the Starke County Police Department refuted those concerns. He stated that the snow plows do get out before 8 a.m. contrary to what others had said.

All four of the superintendents of the four school corporations which would be affected by the proposed change expressed their views favoring the change. One superintendent discussed the hardship that Starke County's being on central standard time imposed on students of the North Bend Township who attend school in the Culver Community School Corporation District, which is on eastern standard time, and those students' families. The time difference affects ninety-two (92) students in sixty-four (64) families. Because of the time difference, these students must get on buses often around 6 a.m. c.s.t. Moreover, the superintendent explained that the time difference presented a special problem in the area of vocational and special education because the Culver Community Schools are in a vocational and special education cooperative with school districts in Starke County, and the two communities are on different time zones. He stated, "It has caused severe problems with transportation of the handicapped and with sharing joint vocational and special education programs."

Another superintendent discussed two problems that being on central time presents. First, there is the problem of scheduling of events with other schools, such as athletic events, debate teams, etc. Sometimes the students have to miss school to get to the other schools on time. He conceded that this problem was minor and could be dealt with. However, the second problem is more fundamental. He pointed out that the Knox Community School System only has joint programs with schools from the Eastern Time Zone and Starke County. Presently, the Knox School System is picking up children who do not see well or who do not hear well at 6 a.m. c.s.t. to get them to Plymouth on time to participate in a special education program because Plymouth is an hour earlier. He stated, "I think that borders on cruel and inhuman treatment to young children who do not hear well and do not see well and sometimes think very well to be out there at six o'clock in the morning to be picked up."

The superintendent of the North Judson-San Pierre School Corporation (NJ-SPSC) in North Judson, Indiana, cited numerous agencies with which the NJ-SPSC deal on a daily basis. These agencies are in Indianapolis, South Bend, Fort Wayne, Plymouth, Bloomington, and Lafayette, all of which are on eastern time, while the NJ-SPSC is on central time. He explained how the NJ-SPSC loses as much as three hours per day in its ability to communicate with these agencies because NJ-SPSC's opening, lunch and closing hours differ from those of the agencies. The superintendent of the Oregon-Davis School Corporation pointed out that the proposed change would work to the advantage of many families who work in the South Bend and St. Joseph County areas. Presently, these families must operate in two time zones; the change to eastern time would permit them to operate, at least with regard to work and school, in one time zone.

Other commenters were disgruntled that the school superintendents supported the change to eastern time. One stated that she "was appalled that our local school superintendents place their administrative convenience above the safety of our children." Another found it "ironic that the superintendent for (the NJ-SPSC) spoke in favor of eastern time." He thought that the superintendent was "expressing a personal preference rather than the best interest of the school system." He further pointed out that his wife, a teacher who has frequent professional contact with Indianapolis, "views the time difference as a benefit because she can conduct downstate telephone business before the start of her workday."

2. Business, Industry, and Economics

Many of the comments addressed the importance and impact of the time change on business, industry and economics. Starke County has a high unemployment rate, so many residents must commute outside the county for employment. One group that the proposed change will impact is commuters. On the one hand, if people live in Starke County and commute to western destinations to work, such as Lake, Laporte and Porter counties, those commuters will be inconvenienced by the time change because they will then live in one time zone and work in another. Presently, they live and work in the same time zone. On the other hand, if people live in Starke County and commute to eastern destinations to work, such as Marshall, Pulaski and St. Joseph counties, they will be convenienced by the time change because the change will allow them to live and work on the same time. Presently, they live on central time and work on eastern time.

Several commenters argued that more people commuted to western destinations rather than to eastern destinations. They pointed out that the 1980 Census data showed that the commuting pattern was "overwhelmingly" in favor of the Central Time Zone and that there was no subsequent data to refute that information. One commenter reported that a study conducted by the Development Foundation recently found that 2500 people out of a total work force of about 8000 people commuted out of Starke County to work. The study did not break down the figures in terms of the destinations to which these people commuted.

Nonetheless, this commenter stated that the jobs that exist in the Central Time Zone as compared to the quality and pay of the jobs in the Eastern Time Zone are far different. "When we find a job in Lake and Porter County, that job pays significantly more than the five dollar- and six dollar-hour job over in the non-union shop (on eastern time); * * * so even if the commuter numbers were fifty-fifty, the dollars that would come into the county because of the commute are going to be greater because the jobs that exist in the central zone are higher-paying jobs."

Others disputed this comment. One commenter said, "It was stated that Marshall County jobs pay six dollars an hour; I can call that a lie. I make a lot more than that, and I work for the city of Plymouth." Commenting on the high-paying jobs in the eastern time zone,

another person stated that, "There are a lot of jobs (in the Eastern Time Zone), and I think that there's just as much of a percentage (in the Eastern Time Zone) or maybe even more. I don't know very many people who work in Chicago; I know most of them that work toward (the Eastern Time Zone), and there is just as high-paying jobs (in the Eastern Time Zone), but the thing of it is, if you do work in the (Eastern Time Zone), you got to get up too early."

Another focal point of the comments was Starke County's present and future ties to the east and west. A commenter stated that one issue the Department has to focus on in this proceeding is "whether we're oriented toward South Bend or whether it's Lake and Porter County, Gary and Chicago. Which way are there going to be economic advantages for people in the county?" There were comments about Starke County's present and future contacts and ties to the east and the west.

Several commenters felt that Starke County will be even more aligned to central time in the future than it is presently. As articulated by one, "If we look at the economic future in the two directions that we're talking about, the clear winner is toward Northwest Indiana and the Central Time Zone. That's where I think our future is going to be—maintaining ties in that direction. I think that's where the jobs are going to come from for the people from Starke County. That's where the better paying jobs are going to come from, and that's, I think frankly, the way we're going to need to be." This group of commenters pointed out that a "major economic boost" for Northwest Indiana is coming with the construction of a series of major marinas along the shores of Lake Michigan. They believe that "positive ripple effects will be felt in Starke County." Moreover, they contend that a "major economic impact will be felt with the construction of the third major airport around Chicago."

These commenters compared this rather positive economic outlook for the Central Time Zone with what they considered the present and future economic bleakness of the Eastern Time Zone. They pointed to several plant closings and job losses as evidence of the "gloominess": 100 jobs at Bivouac Industries; 130 jobs at Burcliff Industries, Lakeville; 268 jobs at Allied Products; 650 probable jobs at Whitehall Laboratories; and 800 probable jobs at Uniroyal. In addition, they pointed out that the closure of Grissom Air Force Base recommended by the Base Closure and Realignment Commission could mean an estimated loss of 2200 military personnel and 100 civilian jobs.

A second group of commenters comprised mostly of corporate leaders and representatives, including those from Starke County's three largest corporations, were of a different view. They favored the proposed change because most of their business contacts were toward the east. The corporate officers, managers or representatives of nine corporations commented: eight of those corporations represented favored the change. One general manager of a corporation that employs 65 people stated, "Economic development should take place in this region because a daily trip to Chicago is just too long of a drive, no matter what time zone we are in." He pointed out that it would be beneficial for his corporation to be a part of the Eastern Time Zone. "Ninety percent of both our customers and suppliers (including common carriers) are located east of us. Most of our travelling related business takes place in the Eastern Time Zone.* * *" Responding to the comments regarding the third Chicago airport as a reason against the change, he stated that "nobody knows where this airport is going to be located," and that "if Midway Airport is an indication of the success of such smaller airports in highly populated areas, then most travellers are still going to fly out of O'Hare for a long time to come."

Several other corporate leaders explained that their businesses are more tied to the east rather than to the west and that being on central time inconveniences their business. "Our company finds it very difficult to schedule service for customers in the eastern time zones. It would be so much better to be on the same time as our clients." This corporate leader went on to explain that their regional offices and most other districts his company did business with are "on fast time." This sentiment was echoed by another corporation which stated, "Over ¾ of our customers live in (the) Eastern (T)ime (Z)one. All our commerce is done in (the) Eastern Standard Time Zone." Still another corporate leader stated, "The majority of our customers are located East of Starke County next to Plymouth and South of Starke County into Winamac. This causes problems to set up time schedules for any service work."

The general manager of another corporation which employs 160 people discussed the ways in which being on central time presently inconveniences his corporation. He stated that the majority of the corporation's customers are in the Eastern Time Zone and that "customers and visitors traveling from other parts of the state arrive at our facility one hour early." He further stated that a change would benefit travel and transportation because the airport which it uses is in the Eastern Time Zone which results in a shorter workday in the office to meet flight schedules. Finally, he commented on how service to the corporation's customers would be enhanced in event the proposed change is made because the corporation would be on the same time as South Bend, "the hub for air freight distribution;" being on the same time as South Bend would "enhance our ability to better service our customers during crisis situations."

Finally, one commenter noted all of the banks in Starke County except one have filed letters in support of the change of time from central time to eastern time. Since the Department's last decision concerning Starke County in 1987, the banks have changed their orientation from Chicago to financial centerxs in the Eastern Time Zone. The American State Bank transferred its financial center from Chicago to Indianapolis. Ameritrust, formerly Knox Building Loan & Savings Association, has changed its center of commerce from Chicago to South Bend. First Source Corporation, formerly The Hamlet State Bank, has changed its financial center from Chicago to South Bend. Society Corporation, formerly Farmers Bank and Trust Company, Knox, Indiana, has changed its center of operation from Chicago to Cleveland, Ohio. One bank, Indiana Federal Savings & Loan Association, which is headquartered in Valparaiso, Indiana remains tied primarily to central time.

3. Health Care

Several comments addressed the effect the proposed change would have on health care. One physician at Starke Memorial Hospital was against the change and believed a change would inconvenience the health care community. He pointed out that of the 30 physicians that staff the hospital and live outside of Starke County, 22 live in the Central Time Zone. Moreover, he stated that of the 95 patients that had to be transferred from Starke County Memorial Hospital for more detailed care, 80% of those were transferred to hospitals in the Central Time Zone. Another commenter who is a caseworker for the Starke County Department of Public Welfare stated that many of her clients who are disabled and elderly are referred to hospitals in the Central Time Zone for testing and treatment. She also has

clients who are veterans and who must make visits to Veterans Administration (V.A.) clinics and hospitals in the Central Time Zone. A representative from the Veterans of Foreign Wars demonstrated that it would be more beneficial for the more than 2500 veterans to remain on central time. He explained that there are V.A. facilities in both time zones but that the facilities in the Central Time Zone are closer and have better transportation to them.

One commenter, a home health care nurse, responding to such comments stated that patients from Starke County Memorial Hospital are also sent to South Bend, Indianapolis and Fort Wayne, and that some of her patients are V.A. patients from Fort Wayne or Indianapolis. She further explained that some of her patients catch a bus that goes to South Bend Memorial Hospital for radiation or chemotherapy. Another commenter stated, "Hospitals are open 24 hours a day, and, I agree, we transfer a lot of people out of here. But the hospitals are open 24 hours a day, and the doctors are supposed to be on call, just like I am, 24 hours a day. They (the doctors) can change their time."

4. Legal Services

Commenters associated with the legal profession were against the change. Indiana is a liberal change of venue state, and numerous cases are transferred to Starke County from other jurisdictions. The majority of those cases are from jurisdictions on central time. A magistrate said that parties from other jurisdictions often show up an hour early, but if the change is made, he fears it would result in parties showing up an hour late. An attorney in Knox commented that most of the people he encountered in his practice work in the Central Time Zone, and he believed that many more would be inconvenienced rather than convenienced by the change. A commenter from the prosecuting attorney's office of Starke County was against the change. She noted that most of the contacts of her office, such as the Indiana State Police Post for Area #1, the Tri-County Drug Enforcement Task Force, and other prosecution and defense lawyers with whom the office communicates, were within the Central Time Zone.

5. Farming

Many of the farmers in Starke County favor the change. One commenter thought that a change to eastern time will benefit the farmers because as a farmer he conducted most of his business to the east and south. Another commenter, a farmer's wife, prefers the change simply because "it's better for harvesting." Another commenter stated that when the time changes in the fall, "we are in the middle of picking corn and harvesting beans. The daylight hours are very important to our operation, and when the time changes the retail stores open an hour later in relation to daybreak." He favors changing to eastern time "so that the store [will] open earlier in the day in relation to daybreak." Moreover, he stated that the majority of his trucking operation was to the south and east. One farmer stated that he will be inconvenienced by the change because he sells his grain to elevators in Chicago. He stated that a change to eastern time will cause him to get up in the winter months "in the dark when I couldn't do anything due to weather, cold and darkness."

6. The Election

In the May 1990 primary election, the issue of the proposed time zone change was put to an advisory referendum. The proponents of the change won by a tally of 1995 to 939. Many commenters were impassioned in either defending or attacking the referendum. Those commenters opposed to the change discredited the election because they "were not informed about the time change referendum," because many people "do not vote in the primary," and because "only 13% of the total adult population voted to make the change." Those in favor of the change supported the election stating that "the time zone issue was well publicized before the election" and that the "people voted, and they should get what they voted for." One commenter stated, "We voted! Everybody had the right to vote. When you give up that right, you should not grumble about what was voted on. If it's voted on, if it's passed—if it's the President or if it's an issue like this—it should be buried."

7. Miscellaneous

There are three major television stations in South Bend that are on eastern time. Several commenters believe that the change will inconvenience television viewing because currently they watch the news at 10 p.m. c.s.t. If the change occurs, they will have to watch the news at 11 p.m. e.s.t.

Another commenter, a postmaster, noted that the post office in Knox is tied to the Eastern Time Zone because its management office is in Fort Wayne and the mail processing center is in South Bend. Moreover, people have called the postmaster because their mail was not delivered because the postal delivery people were unable to deliver the mail after dark. A change to eastern time will give the employees time to deliver and will place the Knox post office on the same time as its management office.

There were several commenters who did not favor either central time or eastern time, but wanted Indiana all in one time zone.

Several commenters noted how divided the community had become over the question of whether to change. One commenter stated that he "was particularly struck with how intolerant people were at the (April 4, 1991) public hearing. At the previous two hearings, although people disagreed, they at least were courteous enough to let the other side speak. But that was not the case this time." Another noted how the hearing had fallen to the level of "pitting neighbor against neighbor, and but for the fact of the capable hands of our moderator, this meeting would have gotten out of hand."

Finally, several commenters addressed the impossibility of the Department's decision being able to please everyone. One newspaper article (discussing the proceeding to change the time zone in 1987) attached to a comment stated, "* * * but if Starke County were to go to (the Eastern Time Zone) it would merely be a matter of exchanging one group of unhappy people for another." One commenter remarking on this proceeding stated, "It's really a matter of whose ox is going to be gored."

Decision and Discussion

The Department is required to act pursuant to the Uniform Time Act. The Act states that "the limits of each zone shall be defined by an order of the Secretary of Transportation, having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce * * *." Traditionally, the Department has defined the "convenience of commerce" standard very broadly to include consideration of all the impacts on the communty from a change in the time zone. In making a decision, the Department looks at:

—Where businesses in the community get their supplies and where they ship their goods and products;

—Where the television and radio broadcasts originate;

—Where newspapers are published;

—Where the community gets its bus, rail, and flight service, both passenger and freight;

—What percentage of residents work outside the community and where the residents work;

—What the major elements of the community's economy are; and

—If residents leave the community for schooling, recreation, health care, or religious worship, what standard of time is observed in the places where they go for these purposes. Additionally, the Department considers any other impacts the proposed time change might have on the community and whether the proposed change has community support.

As commenters correctly observed, no decision on the location of a time zone boundary can ever be satisfactory to everyone. Either decision will make life easier for some people and more difficult for others. The Department is well aware of this fact, and regrets the inconvenience that this decision will cause for some Starke County residents.

In an area like Starke County, a decision on a time zone boundary will not have significant effects on commerce on a national scale. In order to determine what would "serve the convenience of commerce" in such a case, the Department looks at the balance of convenience for the community and its businesses, institutions, and residents. There is substantial evidence provided by commenters on both sides of the question. Based on the evidence, the Department has concluded that placing Starke County in the Eastern Time Zone will better satisfy the statutory standard.

With respect to education, all four superintendents of the school systems (Starke County's largest employer) which will be affected by the change support the move to eastern time. They favor the change primarily because it will alleviate the administrative burden caused by having to operate joint programs with schools on eastern time and, thereby, facilitate the education of Starke County's students. The Department agrees.

Opponents of the change did not persuade the Department that the change to eastern time would increase the danger to school children who will have to catch the bus in the dark. However, a Starke County policeman stated that statistics simply do not show that school children will be exposed to greater danger. As the Department explained in its earlier decisions concerning Starke County, schoolbus pickups in rural areas tend to be at the children's homes so that children can wait safely inside until the schoolbus arrives to pick them up. Second, nearby eastern zone counties already have similar time and light situations for morning pickups that Starke County will have when placed on eastern time. No data was submitted showing that nearby eastern zone county school children were experiencing more accidents than central zone county school children because of the time and light differences. The Department concludes that the change to eastern time will not increase the danger to school children in Starke County

The longer fog and snow delays and inconveniences to athletic and academic teams who will have to return late at night after competing with schools on central time are valid concerns; however, in terms of priority, the school superintendents preferred increased administrative efficiency over shorter fog delays and earlier returns from games or contests by their athletic and academic teams competing with schools on central time. The Department lent deference to the superintendents' positions. In addition, one commenter noted that getting home later from games can be balanced, to some degree, by scheduling games in the Central Time Zone earlier in the evening and allowing Starke County teams to leave school early for those games. The earlier schedule would permit Starke County teams to return to Starke earlier.

The Department also finds that corporate and financial institutions (including the three largest employers outside of the school systems) in Starke County look to the east for most of their business and contacts. The overwhelming majority of the representatives from these institutions who responded supported the change to eastern time. They demonstrated that these institutions are dependent more on the east for customers, supplies, transportation, and organization than they are on the west. As noted, major financial institutions have changed their orientation from central time to eastern time as well.

In its October 22, 1981 decision concerning Starke County, the Department denied the requested change primarily because the information obtained during the rulemaking proceeding, including data regarding commuting patterns for Starke County compiled by the Census Bureau after the 1980 Census, suggested that, of the people who commuted to work outside of Starke County, more people commuted to the west rather than to the east. In a subsequent decision in March of 1987, the Department concluded that the commuter numbers were virtually the same as before, and there was no hard data to suggest that the commuting patterns had changed. The Census Bureau has not yet compiled the information showing the commuting patterns after the 1990 Census.

Given the passage of time since the 1980 Census, however, the conclusion that commuting patterns continue to favor central time areas is not as strongly based as it once was. There was at least impressionistic evidence provided during this proceeding to the effect that patterns are less oriented to the west than they once were. In addition, the major educational, corporate and financial institutions in Starke County have shifted their focus to the east. The leaders of these institutions believe that the time change will facilitate their administrative, business and commercial ties with the east. The Department agrees.

Also, the opponents of the change implied that the number of people who commute to the west will increase with the construction of the new airport outside of Chicago. A study conducted by a consultant predicted increased jobs in northwest Indiana with the construction of the third major airport for Chicago; however, these predictions were insufficient to overcome the present benefits that the time change will give to the financial, corporate and educational institutions. No definite site has been selected as of yet, and the benefit to Starke County is too uncertain to suffice as a reason for denying the time change, especially in light of the present benefits the change will mean for the County.

Members of the health and legal professions were predominantly opposed to the proposal. However, after considering all the information, we conclude that the convenience of commerce would be better served if the educational, corporate and financial institutions were placed on the same time as most of their contacts, customers and suppliers.

There was a nearly equal number of comments on each side of the issue. As the Department representative noted at the hearing, however, the comment process is not a referendum; it is the persuasiveness of the arguments with respect to the convenience of commerce standard that is the key. Though both sides made strong presentations, we believe that the prochange commenters made the stronger case.

We would be remiss if we did not give weight to the actual referendum on the issue in which Starke County voters supported the proposed change by over a two to one margin. The result of this referendum must be taken into account as revealing the sense of the electorate as to what is best for their county.

Impact on Observance of Daylight Saving Time

This final rule does not directly affect the observance of daylight saving time (d.s.t.). Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2 a.m. on the first Sunday in April until 2 a.m. on the last Sunday in October, except in any State that has exempted itself from this observance. A State in more than one time zone may have its exemption apply only to that part of the State that is in the more easterly time zone. Indiana is the only State that has exercised this "split State" exemption. The 81 counties of the State that are in the Eastern Time Zone do not observe d.s.t., while the eleven in the Central Time Zone, do. Thus, the Department's decision to move Starke County from central time to eastern time means that it will be exempt from d.s.t.

Effective Date

This final rule is effective at 2 a.m. central daylight time (c.d.t.)/2 a.m. eastern standard time on Sunday, October 27, 1991. Starke County residents should not move their clocks either forward or backward in order to make the change to eastern standard time. The effective date and time coincide with the change from daylight saving time to standard time. The Department believes that this is the most logical time for the change to take effect since it is at this time of year that everyone naturally focuses on time.

Rulemaking Analyses and Notices

Regulatory Flexibility Act

I certify under the criteria of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities because of its highly localized impact.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The rule is not a major rule under Executive Order 12291 or a significant rule under DOT Regulatory Policies and Procedures, 44 FR 11034. The economic impact is so minimal that it does not warrant preparation of a regulatory evaluation.

Executive Order 12612 (Federalism)

The final rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612; it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 71

Time.

In consideration of the foregoing, DOT amends title 49, Code of Federal Regulations, part 71 as follows:

PART 71—[AMENDED]

1. Authority for part 71 continues to read:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 15 U.S.C. 260–267.

2. Paragraph (b) of § 71.5 is revised to read:

§ 71.5 Boundary line between eastern and central zones

(b) Indiana-Illinois. From the junction of the western boundary of the State of Michigan with the northern boundary of the State of Indiana easterly along the northern boundary of the State of Indiana to the east line of LaPorte County; thence southerly along the east line of LaPorte County to the north line of Starke County; thence west along the north line of Starke County to the west line of Starke County; thence South along the west line of Starke County to the south line of Starke County; thence west along the south line of Starke County to the east line of Jasper County; thence south along the east line of Jasper County to the south line of Jasper County; thence west along the south lines of Jasper and Newton Counties to the western boundary of the State of Indiana; thence south along the western boundary of the State of Indiana to the north line of Gibson County; thence easterly and southerly along the north line of Gibson County to the east line of Gibson County; thence south along the east line of Gibson County to the north line of Warrick County; thence easterly and southerly along the north lines of Warrick and Spencer Counties to the east line of Spencer County; thence southerly along the east line of Spencer County to the Indiana-Kentucky boundary.

* * * * *

Issued in Washington, DC on October 11, 1991.

Samuel K. Skinner,

Secretary.

[FR Doc. 91–25055 Filed 10–11–91; 3:37 pm]

BILLING CODE 4910–62–M

Proposed Rules

Federal Register
Vol. 56, No. 201
Thursday, October 17, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-126]

Importation of Pomelo from Israel

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations to allow the importation of pomelo from Israel, subject to completion of the Animal and Plant Health Inspection Inspection Service prescribed cold treatment for the Mediterranean fruit fly. We believe this action is warranted because there appears to be no significant pest risk associated with the importation of pomelo from Israel under these circumstances.

DATES: Consideration will be given only to comments received on or before November 18, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-126. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Robert L. Griffin, Head, Permit Unit, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

SUPPLEMENTARY INFORMATION: The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

Currently the regulations in § 319.56 do not provide for the importation of pomelo from Israel. Both the Mediterranean fruit fly (*Ceratitis capitata*) and the Oriental red spider mite (*Eutetranychus orientalis*) are known to attack citrus in Israel. These are considered potentially destructive pests by the Animal and Plant Health Inspection Service (APHIS) and neither is present and widely distributed in the United States.

Recently the plant protection service of Israel requested that we consider allowing the entry of pomelo (*Citrus grandis*) from Israel. Although both the Mediterranean fruit fly (Medfly) and the Oriental red spider mite (ORSM) are known to attack citrus in Israel, research done by the Israelis and accepted by APHIS demonstrates that the cold treatment specified in § 319.56-2d(a)(2)(i) for Medfly is also effective against the ORSM. Pest risk analyses conducted by APHIS have determined that any other injurious insects that might be carried by the pomelo would be readily detectable by a USDA inspector.

Therefore, we propose to add a new § 319.56-2u to allow the importation of pomelo from Israel, subject to completion of the cold treatment in § 319.56-2d(a)(2)(i) and to all other applicable requirements of title 7 of the Code of Federal Regulations, >Subpart--Fruits and Vegetables.> Entry would be limited to North Atlantic ports north of and including Baltimore if treatment is to be completed in the United States. The climatic conditions in the northeastern United States would ensure that any injurious pests accompanying shipments of pomelos from Israel prior to treatment would not pose a risk in that area. Entry would be allowed through any port if treatment has been completed prior to arrival in the United States.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We are proposing to allow the importation of pomelo from Israel, subject to completion of an APHIS-prescribed cold treatment for the Medfly and the OSRM. Embassy officials anticipate that initial annual pomelo shipments from Israel to the United States would average between 200 and 300 metric tons and increase to approximately 1,000 metric tons within several years. The initial retail value of Israeli pomelo shipments would range from approximately $373,600 to $747,000. As Israel increases annual exports, the total retail value of pomelo shipments to the United States would be expected to increase to between $1.5 million and $2.1 million.

In the United States, pomelo production represents an extremely small portion of the domestic citrus industry. There are only a handful of commercial pomelo producers in the United States--approximately two to three in Florida, with some additional production occurring in California. Current estimates indicate that there are fewer than 1,000 pomelo trees in the United States. Domestic producers grow pomelo as a small part of large-scale citrus operations, and it is expected that they will continue to grow pomelo at the same rate. Thus domestic production of pomelo is not expected to be affected by increased imports from Israel.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we propose to amend 7 CFR part 319 as follows:

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In Subpart—Fruits and Vegetables, a new § 319.56–2u would be added to read as follows:

§ 319.56–2u Conditions governing the entry of pomelo from Israel.

Pomelo from Israel may be imported into the United States only if cold treated in accordance with § 319.56–2d(a)(2)(i) of this subpart and if all other applicable requirements of this subpart are met. Entry is limited to North Atlantic ports north of and including Baltimore, MD, if treatment is to be completed in the United States. Entry may be through any port if treatment has been completed prior to arrival in the United States.

Done in Washington, DC, this 11th day of October, 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–25036 Filed 10–16–91; 8:45 am]

BILLING CODE: 3410–34–F

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7 CFR Part 360

[Docket No. 91–064]

RIN 0579–AA46

Noxious Weeds; Addition to List

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the noxious weed regulations by adding a weed, *Melaleuca quenquinervia* (Cav.) Blake, referred to as broadleaf paper bark tree, to the list of noxious weeds. Listed noxious weeds may be moved into or through the United States only under a written permit and under conditions that would not involve a danger of dissemination of the weeds. This action appears to be necessary to prevent the artificial spread of the weed into noninfested areas of the United States.

DATES: Consideration will be given only to comments received on or before December 16, 1991. Requests for a public hearing must be received on or before November 18, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91–084. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Thomas G. Flanigan, Operations Officer, Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations (referred to below as the regulations) were established under authority of the Federal Noxious Weed Act of 1974 (referred to below as the Act) and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States, but do not affect the movement of listed noxious weeds that are moved solely intrastate.

A listed noxious weed may be moved into or through the United States only pursuant to a written permit. The regulations provide for the issuance of a written permit only upon a determination that the importation and movement of the noxious weed would not involve a danger of dissemination of the noxious weed in the United States.

The list of noxious weeds in the regulations is divided into aquatic weeds, parasitic weeds, and terrestrial weeds. This document proposes to add *Melaleuca quenquinervia* (Cav.) Blake (commonly known as *Melaleuca*; referred to below as broadleaf paper bark tree) to the list of noxious aquatic weeds.

Section 3(c) of the Act (7 U.S.C. 2802(c)) defines a noxious weed as "* * * any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish or wildlife resources of the United States or the public health."

Broadleaf paper bark tree was introduced into Florida from Australia in the early 1900's. During the 1940's, hundreds of thousands of seedlings were planted for erosion protection for the Lake Okeechobee levee project. The broadleaf paper bark tree exhibited faster growth and more frequent and copious flower and seed production in Florida than in Australia due to a favorable climate and the absence of natural enemies. In addition to its erosion prevention capabilities, this fast-growing plant was valued for its use as a natural fence and windbreak, for its wood, and for its ornamental characteristics. It also flowers during periods when most other plants do not, so it provides nectar and pollen for Florida's overwintering honey bee industry. Widely planted as an ornamental, this tree now also exists in California, Texas, Louisiana, Hawaii, and Puerto Rico. The climate in these areas has not allowed the uncontrolled spead of broadleaf paper bark tree which has occurred in Florida.

In recent years there has been growing concern in south Florida that the continued, uncontrolled spread of broadleaf paper bark tree may eventually destroy the Everglades, eliminate certain rare, threatened, and endangered plant and animal species, and impact future water supplies. Florida state agencies, members of Congress, conservation groups, environmental groups, and individuals have requested that APHIS add broadleaf paper bark tree to the list of noxious weeds in 7 CFR part 360, giving the Animal and Plant Health Inspection Service (APHIS) authority to regulate the interstate movement of broadleaf paper bark tree from quarantined areas and to cooperate with Florida state authorities in managing this plant. This introduced weed is already having an adverse effect on the water table in southern Florida, resulting in a loss of wetlands. The continued loss of wetlands would adversely affect the

quality of life for citizens living in that area, the survivability of wildlife and fish, and the biodiversity of the ecological system.

A notice of two public meetings and request for comments was published in the September 24, 1990, **Federal Register** (Docket No. 90–158, 55 FR 39010), with two subsequent notices of reschedulings (Docket No. 90–217, October 30, 1990, 55 FR 45611; and Docket No. 90–225, November 15, 1990, 55 FR 47776). Two meetings were held, on December 14 in Ft. Lauderdale, Florida, and on December 18 in San Francisco, California, to gather information concerning whether broadleaf paper bark tree should be designated as a noxious weed. A total of 27 people gave testimony at the Ft. Lauderdale meeting. Speakers included a U.S. Congressman and private individuals recalling their personal experiences with the plant, and representatives of over 20 organizations. Organizations included city, county, State, and Federal governmental agencies, environmental groups, and nurserymen. All speakers supported listing broadleaf paper bark tree as a noxious weed. No one spoke at the December 18 California meeting.

We have also received 35 written statements from similar interest groups as those listed above expressing concerns about broadleaf paper bark tree. Of major concern was that the weed outcompetes or replaces native vegetation in Florida. Other expressed concerns included the adverse effects of the weed on wildlife and fish, ecology (biodiversity), the water table, public health, fire control in residential areas, and on navigation.

Only one comment opposed designating broadleaf paper bark tree as a Federal noxious weed. Broadleaf paper bark tree is widely sold as an ornamental in California, and there is some interstate movement from California to Arizona. Although the commenter opposed designating the plant as a noxious weed, he acknowledged that, as long as the nursery industry could continue to sell the plant in California, losing the Arizona sales would not adversely impact the industry.

This change to the regulations would help protect areas not infested from becoming infested through artificial movement of the weed. Designating broadleaf paper bark tree as a noxious weed would allow APHIS to cooperate with other Federal and State agencies in conducting biological control activities. By providing this service, it is possible that wetlands lost to this weed could revert back to a wetland status. This, in turn, would improve the quality of life for citizens living in or around infested areas, improve habitat for wildlife and fish, and increase biodiversity of the fauna and flora communities.

Therefore, we are proposing to amend § 360.200(a) by adding *Melaleuca quenquinervia* (Cav.) Blake to the list of aquatic weeds regulated under the noxious weed regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule, if adopted, would amend the noxious weed regulations by adding *Melaleuca quenquinervia* (Cav.) Blake, referred to as broadleaf paper bark tree, to the list of aquatic noxious weeds. A listed noxious weed may be moved into or through the United States only pursuant to a written permit. The regulations provide for the issuance of a written permit only upon a determination that the movement of the noxious weed would not involve a danger of dissemination of the noxious weed in the United States.

Broadleaf paper bark tree grows in parts of the United States where the weather is warm and humid and winter freezing does not occur. Present coverage is approximately 3 million acres in California, Florida, Hawaii, Puerto Rico, and Texas.

The State of Florida has declared broadleaf paper bark tree a noxious weed, making the growth and sale of the plant illegal in the State. According to the economic impact assessment made by the Florida Division of Resource Management, the anticipated benefits of the proposed rule far outweigh the costs. The direct and indirect costs to associated industries within Florida have been estimated to be about $12.3 million, while the direct and indirect benefits are about $160 million. The addition of broadleaf paper bark tree to the Federal noxious weed list is not expected to have a greater economic impact than the State amendment.

Broadleaf paper bark tree is grown as an ornamental tree in Southern California. There are about 583 wholesale and 1,026 retail nurseries currently in operation in California. However, it is not known how many of these establishments carry broadleaf paper bark tree. According to the information obtained from representative retail nursery establishments, the total sale of broadleaf paper bark tree plants is estimated to be about $1.5 million to $2 million. This represents less than 0.35 percent of the total sales of the nursery industry in California. Most of the contacted nurseries reported that either they have never engaged in interstate commerce or they have discontinued this practice. The only reported interstate transaction involves the movement of seeds from California to Hawaii.

The Hawaii Department of Land and Natural Resources' Forestry Division raises about 14,000 seedlings annually from seeds which are imported from the mainland. A package of 1000 seeds is sold at an average price of about $3.50. The economic impact of the proposed rule change on this volume of commerce is minor.

If broadleaf paper bark tree is listed as a noxious weed, persons moving it into or through the United States would be required to obtain a written permit. Any resultant inconvenience is not expected to increase broadleaf paper bark tree seed prices. Since the volume of interstate trading of broadleaf paper bark tree is minimal, APHIS concludes that adding it to the aquatic noxious weed list is unlikely to have any significant impact on U.S. producers and consumers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments regarding information collection will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development,

PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, Room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Transportation, Weeds.

PART 360—NOXIOUS WEED REGULATIONS

Accordingly, 7 CFR part 360 would be amended as follows:

1. The authority citation for part 360 would be amended to read as follows:

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 360.200, paragraph (a) listing aquatic weeds would be amended by adding the following in alphabetical order:

§ 360.200 Designation of noxious weeds.

* * * * *

(a) * * *

Melaleuca quenquinervia (Cav.) Blake (broadleaf paper bark tree)

* * * * *

Done in Washington, DC, this 11th day of October, 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–25051 Filed 10–16–91; 8:45 am]

BILLING CODE 3410–34–F

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9 CFR Part 91

[Docket No. 91–099]

Ports Designated for Exportation of Animals, Laredo, TX

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the "Inspection and Handling of Livestock for Exportation" regulations by adding the El Primero Equine Export Facility as an export inspection facility, for horses only, for the port of Laredo, Texas. Additionally, we propose to change the listing for the port of Laredo, Texas, to specify that it has both airport and border port facilities, rather than only border port facilities. The effect of this action would be to add an additional inspection facility for the port. We believe that this facility meets the requirements of the regulations for inclusion in the list of export inspection facilities.

DATES: Consideration will be given only to comments received on or before November 18, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91–099. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Morgan, Senior Staff Veterinarian, Import–Export Animals Staff, VS, APHIS, USDA, room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations) prescribe conditions for exporting animals from the United States. We propose to amend § 91.14 by adding the El Primero Equine Export Facility as an export inspection facility for horses only for the port of Laredo, Texas. Additionally, we propose to change the listing for the port of Laredo, Texas, to specify that it has an airport facility as well as a border port facility.

To receive approval as a port of embarkation, a port must have export inspection facilities available for inspecting, holding, feeding, and watering animals prior to exportation in order to ensure that the animals meet certain requirements specified in the regulations. The regulations provide that approval of each export inspection facility shall be based on compliance with specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

We believe that the El Primero Equine Export Facility, located at Route 7, Box 305, Laredo, TX 78041, (512) 723–5436, meets the requirements of § 91.14(c).

The regulations currently list the port of Laredo, Texas, as a border port. However, the El Primero Equine Export Facility desires to operate as an airport facility. Therefore, it would be necessary to amend the regulations by adding the word airport to the designation of the port of Laredo, Texas.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule, if adopted, would impact the four or five exporters operating in the Laredo, Texas, area. None of these exporters are considered to be small businesses. This proposed rule would benefit these exporters by providing the option of an additional export inspection facility, ensuring the timely export of horses with minimal economic effect.

We have identified no small entities that export horses from the Laredo, Texas, area, and no other small entities that would be affected by this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 91

Animal Diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

Accordingly, we propose to amend 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 would continue to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. In § 91.14(a)(13)(vi), the paragraph heading would be amended by adding the words "airport and" immediately before the words "border port".

3. Section 91.14(a)(13)(vi)(A) would be redesignated as § 91.14(a)(13)(vi)(B) and a new § 91.14(a)(13)(vi)(A) would be added to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(13) * * *

(vi) * * *

(A) El Primero Equine Export Facility (horses only), Route 7, Box 305, Laredo, TX 78041, (512) 723–5436.

* * * * *

Done in Washington, DC, this 11th day of October, 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–25037 Filed 10–16–91; 8:45 am]

BILLING CODE 3410–30–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 333

[Docket No. 81N–114A]

RIN 0905–AA06

Topical Acne Drug Products for Over-the-Counter Human Use; Amendment of Tentative Final Monograph; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the period for submission of comments on the notice of proposed rulemaking amending the tentative final monograph (proposed rule) for over-the-counter (OTC) topical acne drug products to November 7, 1991. The proposed rule appeared in the **Federal Register** of August 7, 1991 (56 FR 37622). FDA is taking this action in response to a request to extend the comment period for an additional 30 days to allow more time to comment on this proposal.

DATES: Written comments by November 7, 1991. New data by August 7, 1992. Comments on the new data by October 7, 1992. Written comments on the agency's economic impact determination by November 7, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 7, 1991 (56 FR 37622), FDA issued a notice of proposed rulemaking to amend the tentative final monograph for OTC topical acne drug products. In this amendment, the agency reclassified the topical acne active ingredient benzoyl peroxide from its previously proposed monograph status (Category I) to "more-data-needed" (Category III) status. FDA issued the notice of proposed rulemaking based on its determination that additional studies are necessary to adequately assess safety concerns about benzoyl peroxide's possible tumor initiating and promotion potential. The agency stated that studies of 18 to 24 months in two species of animals (mouse and rat) are needed to rule out the possibility of carcinogenicity. The agency acknowledged that it may take several years for these studies to be conducted and analyzed, and for a final determination to be made on the safety of benzoyl peroxide. Because animal studies have shown that benzoyl peroxide is a skin tumor promoter in certain laboratory animals and the relevance to humans is unknown, the agency noted its concern about continued OTC marketing availability pending resolution of the unresolved safety issues. Therefore, the agency specifically invited comments on this issue. Interested persons were given until October 7, 1991, to submit comments on the proposal.

On October 1, 1991, the National Consumer League (NCL) requested a 30-day extension to November 7, 1991 in which to file written comments on the continued OTC marketing availability of benzoyl peroxide pending resolution of the unresolved safety issues raised in the August 7, 1991 **Federal Register** notice. NCL stated that additional time was needed to consult with its membership and to coordinate with other organizations interested in this issue.

FDA has carefully considered the request and believes that additional time for comment is in the public interest. The agency believes that additional time will allow for more useful comments to be developed. Thus, the agency considers a limited extension of the comment period to be appropriate.

Interested persons may, on or before November 7, 1991, submit to the Dockets Management Branch (address above) written comments regarding the safety of benzoyl peroxide for use as an active ingredient in OTC topical acne drug products and the agency's economic impact determination. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 10, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91–25053 Filed 10–16–91; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE–4–1–5238; FRL–4022–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware Group III CTG: RACT for VOC From Synthetic Organic Chemical Manufacturing Industries (SOCMI)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a request from the Delaware Department of Natural Resources and Environmental Control (DNREC) to revise the Delaware ozone State Implementation Plan (SIP) by amending

the Delaware air pollution regulations to control volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industries (SOCMI). This revision has been submitted by Delaware to fulfill its 1982 ozone SIP commitment to adopt all applicable control technique guidelines (CTGs) published by EPA. The intended effect of this action is to propose approval of regulations adopted by the State of Delaware to fulfill commitments made in its 1982 ozone attainment plan in accordance with section 110 and part D of the Clean Air Act as amended by the Clean Air Act Amendments of 1990.

DATES: Comments must be received on or before November 18, 1991.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Delaware Department on Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Lewis, (215) 597–6863. The FTS and commercial numbers are the same.

SUPPLEMENTARY INFORMATION: In March 1984, EPA published a CTG document entitled, "Control of Volatile Organic Compound leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment" (SOCMI Fugitives (EPA 450/3–83–006)). To fulfill the requirements of section 172(a)(2) and (b)(3) of the CAA and its 1982 SIP, the DNREC submitted a revision to the Delaware ozone SIP to EPA on April 26, 1988. The revision consists of reasonably available control technology (RACT) regulations adopted in accordance with the recommendations made in the CTG document, referenced above. EPA has reviewed this SIP revision submittal and has determined that the amendments constitute RACT for this source category. Therefore, EPA is proposing approval of Delaware's request to amend its SIP in accordance with section 110 and Part D of the CAA.

In addition, although this submittal preceded the date of enactment of the Clean Air Act Amendments of 1990, it serves to fulfill part of the "RACT fix-up" requirement of section 182(a)(2)(A) of the amended Act for Delaware. Under section 182(a)(2)(A), States were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific States and nonattainment areas.

Delaware submitted the SOCMI revision in April of 1988, one month before EPA issued its SIP call letters by which the Agency required States to correct RACT deficiencies in existing rules and to adopt rules which the State had committed to adopting. However, in its letter further detailing the required corrections Delaware needed to make in accordance with EPA's then-existing guidance, EPA recognized that Delaware was required to adopt a SOCMI regulation and that State had recently submitted the regulations. Although Delaware had submitted the regulations at the time of the SIP call, it was still a regulation required under the Agency's pre-amendment guidance.

The RACT fix-up provision carries forth as requirements under the new ACT, those RACT corrections a State was required to make pursuant to the Agency's pre-amendment guidance. Pursuant to that guidance Delaware was required to adopt a SOCMI regulation. Therefore, EPA's proposed approval today of Delaware's 1988 submission of a SOCMI rule, serves to fulfill the RACT fix-up requirement that Delaware adopt an EPA-approved SOCMI regulations.

The Delaware DNREC's April 26, 1988 submittal also included regulations incorporating new inspection and maintenance (I/M) program cutpoints and new air quality standards and other revisions pertaining to PM10. Only the portion of the April 26, 1988 SIP revision submittal pertaining to the control of VOC leaks from SOCMI facilities is addressed by this rulemaking action and notice. The remaining amendments will be the subject of separate rulemaking actions and notices.

Proposed Regulation

The proposed revision adds a new Section 17 to Regulation XXIV, Synthetic Organic Chemical Production Facility Component Leaks, of the Delaware Regulations Governing the control of Air Pollution. This regulation meets the requirements of the aforementioned CTG document, except as discussed below.

Section 17 at 17.6 of the proposed regulation allows the use of alternative VOC emission reduction system(s). EPA is proposing to approve these provisions as available procedures under the SIP whereby alternative controls may be established. However, EPA approval of this procedure will *not* constitute pre-approval of any alternative requirements set under the provisions. Prior to EPA's final rulemaking action approving this SIP revision, the Delaware DNREC must amend its submittal to require that any such alternative VOC emission reduction system also be approved by the United States Environmental Protection Agency in addition to the Secretary of the Delaware DNREC. Unless and until EPA formally approves any such alternative control system as a SIP revision, the general RACT requirements of section 17 remain effective and federally enforceable. If the Delaware DNREC does not amend section 17 at 17.6 to require EPA approval of alternative control systems, EPA shall disapprove 17.6 at the time of final rulemaking. Paragraph 17.6, Petition for Alternative Controls, is sufficiently segregated from the other requirements of section 17 such that disapproval of 17.6 would not change the scope or effect of the RACT requirements of paragraphs 17.1 through 17.5.

EPA has reviewed this regulation and its conditions and has determined that, subject to the changes described above, this constitutes RACT for SOCMI. EPA has also determined that any new SOCMI sources or modifications to such sources constructed in Delaware would be covered by new source review requirements pursuant to Regulation XX, Section 19 of the Delaware SIP.

Proposed Action

EPA is proposing approval of the addition of section 17 to Regulation XXIV, Synthetic Organic Chemical Production Facility Component Leaks, as a revision to the Delaware SIP. EPA's final approval of this SIP revision is contingent upon the receipt of an amended formal submittal from the Delaware DNREC as stipulated in this notice.

A more detailed description of EPA's evaluation of the above regulatory changes is presented in the Technical Support Document that has been prepared for these revisions. That document is available for public

[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice"; and the existing CTGs.

inspection at the location provided in the **ADDRESSES** section of this notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

This action proposes approval of a revision to the Delaware SIP, which establish RACT for the control of fugitive VOC emissions from SOCMI, and has been classified as a table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291.

The Regional Administrator's final decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110 and Part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7642

Dated: September 26, 1991.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 91–25031 Filed 10–16–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[PA–3–1–5299; FRL–4022–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revised Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision amends the SIP's definition of volatile organic compound (VOC), which is set out in 25 Pa. Code § 121.1. The intended effect of this action is to propose approval of Pennsylvania's revised definition of VOC. This action is being taken under section 110 and part D of the Clean Air Act.

DATES: Comments must be received on or before November 18, 1991. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation & Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection normal business hours at Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 2357, Executive House—2nd & Chestnut Streets, Harrisburg, PA 17120.

FOR FURTHER INFORMATION CONTACT: Jacqueline R. Lewis, 3AT13, at the above listed EPA Region III address. Phone (215) 597–6863.

SUPPLEMENTARY INFORMATION: On January 11, 1991, the Pennsylvania Department of Environmental Resources (PADER) submitted a proposed revision to its SIP. The proposed revision amends the definition of VOC, set out in 25 Pa. Code § 121.1.

Background

EPA's proposed Post-1987 Policy for Ozone and Carbon Monoxide, which was published in the **Federal Register** on November 24, 1987, stated that air quality monitors revealed continued exceedances of the ozone standard in Pennsylvania and that a SIP call would be issued. (See 52 FR 45044). A SIP call is a finding by EPA that the SIP does not provide for attainment by the required date, (section 110(a)(2)(H), 42 U.S.C. 7410(a)(2)(H) and section 110(k)(5), 42 U.S.C. 7410(k)(5) of the Clean Air Act, as amended, Public Law 101–549). On May 26, 1988 and November 8, 1989, EPA sent letters to Robert P. Casey, Governor of Pennsylvania, pursuant to section 110(a)(2)(H) of the pre-amended Clean Air Act notifying him that the Pennsylvania SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following areas were identified in the May 26, 1988 letter, Metropolitan Philadelphia CMSA, Allentown—Bethlehem MSA, Pittsburgh—Beaver Valley CMSA, and Butler and Armstrong Counties. The following areas were identified in the November 8, 1989 letter, Altoona MSA, Erie MSA, Harrisburg—Lebanon—Carlisle MSA, Johnstown MSA, Lancaster MSA, Reading MSA, Scranton—Wilkes-Barre MSA, Sharon MSA and York MSA. The appropriate response to the SIP calls would include: (1) Correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the areas' base year emissions inventories.

On June 14, 1988 and December 7, 1989, EPA sent letters to the Director of PADER's Bureau of Air Quality Control outlining the corrections that needed to be made to Pennsylvania's existing VOC regulations to eliminate the identified deficiencies and inconsistencies in the regulations as pursuant to EPA national guidance. The revised definition of VOC submitted by Pennsylvania on January 11, 1991, is in response to EPA's May 26, 1988 and November 8, 1989 letters.

Content of Revised Regulation

The definition of VOC was revised to reflect current EPA guidance. Prior to this revision, Pennsylvania's definition of VOC incorporated an exemption based on a vapor presence cut-off, and therefore, exempted a number of photochemically reactive compounds of low volatility. The revised definition submitted by Pennsylvania deletes vapor pressure as a criterion for determining whether an organic compound is a VOC, and adds the requirement that any organic compound which "participates in atmospheric photochemical reactions" is a VOC. Pennsylvania's definition was also revised to exempt compounds in a manner consistent with EPA's definition of VOC.

EPA's review of the SIP submittal indicates that Pennsylvania's revised definition of VOC is consistent with EPA's definition of VOC and its reactivity policy. EPA is proposing to approve the Pennsylvania SIP revision containing the revised definition of volatile organic compound (VOC), 25 Pa. Code § 121.1, submitted on January 11, 1991. EPA is soliciting public comments on the revision discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedures by submitting

written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to approve as a revision to the Pennsylvania SIP, submitted on January 11, 1991. This revision consists of the revised definition of VOC, 25 Pa. Code § 121.1 to make the definition consistent with EPA requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.c. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

This action, which proposes to approve a revision to the Pennsylvania SIP, consists of the revised definition of VOC, 25 Pa. Code § 121.1, and has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291.

The Regional Administrator's final decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110 and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7642.

Dated: August 15, 1991

Thomas J. Maslany,

Acting Regional Administrator, Region III.

[FR Doc. 91–25030 Filed 10–16–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[DE–3–1–5235; FRL–4022–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revised Regulations Controlling Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision consists of revised volatile organic compound (VOC) emission regulations applicable in New Castle County, which is part of the Philadelphia, PA–NJ ozone nonattainment area. The intended effect of this action is to propose approval of Delaware's revised VOC regulations to correct deficiencies of Delaware's Ozone Attainment Plan. This action is being taken under section 110 and part D of the Clean Air Act as amended by the Clean Air Act Amendments of 1990.

DATES: Comments must be received on or before November 18, 1991. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation & Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation & Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Jacqueline R. Lewis, 3AT13, at the above listed EPA Region III address. Phone (215) 597–6863.

SUPPLEMENTARY INFORMATION: On July 6, 1990, the Delaware Department of Natural Resources & Environmental Control (DNREC) submitted proposed revisions to the Delaware SIP. The proposed revisions consist of revised rules for VOC emissions in Regulations 1 and 24 of Delaware's Regulations Governing the Control of Air Pollution. This revision includes changes to Regulation 1, Definitions and Administrative Principles, in addition to the following changes in Regulation 24:

(1) Section 1, General Provisions,

(2) Section 4, Gasoline Dispensing Facilities—Stage I,

(3) Section 6, Bulk Gasoline Plants,

(4) Section 8, Petroleum Liquid Storage,

(5) Section 9, Surface Coating Operations,

(6) Section 14, Petroleum Refinery Component Leaks, and

(7) Section 15, Rotogravure and Flexographic Printing.

This notice will address all of the above regulatory changes except section 4, Gasoline Dispensing Facilities—Stage I. This regulatory change will be discussed in a separate rulemaking notice.

Background

In the Federal Register on November 24, 1987, EPA's Proposed Post-1987 Policy for Ozone and Carbon Monoxide stated that air quality monitors revealed continued exceedances of the ozone standard in Delaware and that a SIP call would be issued. (See 52 FR 45044). A SIP call is a finding by EPA that the SIP does not provide for attainment by the required date (section 110(a)(2)(H), 42 U.S.C. 7410(a)(2)(H) and section 110(k)(5), 42 U.S.C. 7410(k)(5) of the Clean Air Act, as amended, Pub. L. 101–549). On May 26, 1988, EPA sent a letter to Michael N. Castle, Governor of Delaware, pursuant to section 110(a)(2)(H) of the pre-amended Clean Air Act, notifying him that the Delaware SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in New Castle County. Because New Castle County is currently designated nonattainment, the appropriate response to the SIP call would include: (1) Correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the areas' base year emissions inventory.

In addition, although this submittal (which includes the regulatory corrections discussed above) preceded the date of enactment of the Clean Air Act Amendments of 1990, it serves to fulfill the "RACT fix-up" requirement of section 182(a)(2)(A) of the amended Act for the New Castle County area. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section

182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. New Castle County, as part of the Philadelphia nonattainment area has been classified as severe 1. Therefore, Delaware's revised regulations for New Castle County, submitted in response to the SIP call letter, also respond to the RACT fix-up requirement.

On June 14, 1988, EPA sent a letter to the Director of Delaware's Air Resources Section outlining the corrections that needed to be made to Delaware's existing VOC regulations to eliminate the identified deficiencies and inconsistencies in the regulations. The revised VOC regulations submitted by Delaware on July 6, 1990, are in response to EPA's May 26 and June 14, 1988, letters.

Content of Revised Regulations

The Delaware DNREC made the following changes to Regulation 1, "Definitions and Administrative Principles".

1. The following terms were added and defined to reflect current EPA guidance: a. Clear coat, b. difficult-to-monitor valves, c. unsafe-to-monitor valves.

2. The following definitions were revised to reflect current EPA guidance: a. VOC, b. petroleum refinery. The most notable of these was the revised definition of VOC. The new definition deletes vapor pressure as a criterion for determining whether or not an organic compound is a VOC, and adds the requirement that any organic compound which is "involved in atmospheric photochemical reactions" is a VOC. Also, several compounds were exempted to make Delaware's definition consistent with EPA's definition.

The Delaware DNREC made the following changes to Regulation 24, "Control of Volatile Organic Compounds."

1. Section 1—General Provisions

The applicability of this section was changed from 10 pounds per day to 15 pounds per day.

[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice"; and the existing CTGs.

2. Section 6—Bulk Gasoline Plant

This section was amended by removing the exemption of submerged fill pipe/bottom fill requirements for bulk plants having a vapor balance system in place before April 30, 1980.

3. Section 8—Petroleum Liquid Storage

Section 8.1 B4 was amended to clarify the applicability threshold for regulations concerning controls on external floating roof tanks used for the storage of crude oil. The revision limits the exemption to tanks with less than 420,000 gallons capacities. Section 8 was also amended by removing 8.1 C which allowed for alternative control systems without EPA approval. In addition, section 8.4 was added to include the following levels of control for fixed roof tanks:

(1) Each tank shall be retrofitted with an internal floating roof with closure seal(s) or equivalent.

(2) Each tank shall be maintained to protect against openings in the fabric.

(3) All openings shall be equipped with covers, lids or seals and kept closed when not in use.

(4) Automatic bleeder vents shall be closed except when the tank roof is floated off or landed on roof legs.

(5) Rim vents shall be set to open when the roof is being floated.

(6) Each tank shall be visually checked annually. This annual check will consist of an external evaluation and an internal check of seal integrity with the use of mirrors, or an equivalent, through a porthole(s). Internal inspection is required only at tank cleanout.

4. Section 9—Surface Coating Operations

This section was amended by changing the applicability threshold for the surface coating operations regulation such that facilities are now subject to the emission limitations if facility-wide emissions from surface coating exceed 2.7 tons per year, 15 pounds per day, or 3 pounds per hour before controls, whichever is the most restrictive.

Section 9.3 allows a source to use an appropriate capture efficiency test method selected from EPA guidance, with the approval of the Department.

Section 9.7 was amended to require all sources applying for credit from an add-on control device, to use an EPA-approved test method to determine transfer efficiency compliance.

5. Section 14—Petroleum Refinery Component Leaks

This section was amended to remove the exemption of inaccessible valves and storage tank valves from the requirement to comply with the regulations.

6. Section 15—Rotogravure and Flexographic Printing

Section 15.1 was amended by extending the applicability such that facilities are now subject to the emission limitation if facility-wide emissions exceed 100 tons per year, in addition to the previous requirement which regulated individual printing presses emitting more than 7.7 tons of press-ready ink per year. Section 15.2 was amended to clarify the requirement for high solid inks to contain 60% by volume non-volatiles.

Section 15.6 allows a source to use an appropriate capture efficiency test method selected from EPA guidance, with the approval of the Department.

EPA's review of these regulatory corrections indicates that Delaware has satisfied the deficiencies and inconsistencies in the existing VOC regulations identified by EPA. EPA is proposing to approve the amendments and additions to Regulations 1 and 24 of Delaware's Regulations Governing the Control of Air Pollution which were submitted on July 6, 1990, as a SIP revision. The State of Delaware certified that public hearings with regard to this proposed SIP revision were held on September 20, 1989, in Dover, Delaware as required by 40 CFR 51.102. EPA is soliciting public comments on the issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this notice.

Proposed Action

EPA is proposing to approve revisions to the Delaware SIP submitted for New Castle County on July 6, 1990, by the Delaware DNREC as meeting the RACT fix-up requirement of the amended Act. These revisions include amendments to Regulation 1, "Definition and Administrative Principles" and Regulation 24, "Control of Volatile Organic Compounds" of the Delaware Regulations Governing the Control of Air Pollution which make those regulations consistent with EPA guidance.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan shall be considered separately in light of specific technical,

economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

This action, which proposes to approve revisions to the Delaware SIP, consists of amendments to Regulations 1 and 24 of the Delaware Regulations Governing the Control of Air Pollution, and has been classified as a Tables 2 action by the Regional Administrator under procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291.

The Regional Administrator's final decision to approve or disapprove this SIP revision will be based on the Administrators determination that it meets the requirements of section 110 and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hyrdocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7646.

Dated: September 24, 1991.

Edwin B. Erickson,

Regional Administrator, Region III.

[FR Doc. 91–25029 Filed 10–16–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 88

[AMS-FRL-4022-5]

Clean Fuel Fleet Credit Programs, Transportation Control Measure Exemptions, and Related Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of Comment Period and Rescheduled Hearing Date.

SUMMARY: This notice announces the rescheduling of a previously announced public hearing and the extension of the comment period. As indicated in the Notice of Proposed Rulemaking entitled "Credits and Transportation Control Measures Programs and other Related Provisions" concerning the Clean Air Act fleets program published on October 3, 1991 (56 FR 50196), EPA planned to hold a hearing on October 17 and 18, 1991. Due to unforeseen and unavoidable circumstances, the hearing has been rescheduled to October 31, 1991. To maintain a 30-day comment period following the hearing, the comment period has been extended as well.

DATES: Comments on this proposal will be accepted until December 2, 1991.

EPA will conduct a public hearing on October 31, 1991. The public hearing will begin at 9:00 a.m. and will continue until such time as all testimony has been presented.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–91–25 at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public hearing will be held at the EPA Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Wyborny, SDSB–12 U.S. EPA, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone (313) 668–4473.

SUPPLEMENTARY INFORMATION: For further information on this matter, please refer to EPA's October 3, 1991, Federal Register Notice of proposed rulemaking at 56 FR 50196.

Dated: October 10, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–25028 Filed 10–16–91; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 56, No. 201
Thursday, October 17, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Administration Committee; Meeting

ACTION: Committee on Administration Notice of Public Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the two meetings of the Committee on Administration of the Administrative Conference of the United States.

The committee has scheduled the meetings to discuss proposed recommendations concerning the Farmers Home Administration's implementation of the farmer-lender mediation provisions of the Agricultural Credit Act of 1987. They are based on a study by Professor Leonard Riskin of the University of Missouri-Columbia School of Law.

Copies are available from the Conference.

DATES: Thursday, October 24, 1991 at 10 a.m., Thursday, November 14, 1991 at 2 p.m.

LOCATION: Library of the Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

PUBLIC PARTICIPATION: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Dated: October 11, 1991.

Michael W. Bowers,

Deputy Research Director.

[FR Doc. 91–25115 Filed 10–16–91; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Human Nutrition Board of Scientific Counselors; Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: Human Nutrition Board of Scientific Counselors Work Group.

Dates: November 7–8, 1991.

Time: 7:30 a.m.–5 p.m., November 7; 8:30 a.m.–4:30 p.m., November 8.

Place: Bethesda Marriott, Pooks Hill, Bethesda, Maryland.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review nutrition monitoring.

Contact Person: Jacqueline Dupont, Executive Secretary, Human Nutrition Board of Scientific Counselors, U.S. Department of Agriculture, BARC-West, room 132, Building 005, Beltsville, Maryland 20705. Telephone (301) 344–3216. Done at Beltsville, Maryland, this 1st of October 1991.

Jacqueline Dupont,

Executive Secretary, Human Nutrition Board of Scientific Counselors.

[FR Doc. 91–25014 Filed 10–16–91; 8:45 am]

BILLING CODE 3410–03–M

Food Safety and Inspection Service

[Docket No. 91–032N]

National Advisory Committee on Microbiological Criteria for Foods; Meetings

Notice is hereby given that meetings of the National Advisory Committee on Microbiological Criteria for Foods, will be held November 4–6, 1991, Monday from 12:30 p.m. to 5 p.m., and Tuesday from 8:30 a.m. to 4:30 p.m., at the Knickerbocker Hotel, Walton Place at N. Michigan Avenue, Chicago, Illinois 60611, telephone (312) 751–8100. On Wednesday, the Seafood Subcommittee will meet from 12:30 to 5 p.m. at the Ramada Hotel-O'Hare, 6600 N. Mannheim Road, Chicago, Illinois 60611, telephone (708) 827–5131.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

Scheduled sessions are as follows:

(1) Monday, November 4, 1991, 12:30 p.m. to 5 p.m.—concurrent meetings of the Food Handling Practices and Hazard Analysis and Critical Control Points (HACCP) Subcommittees;

(2) Tuesday, November 5, 1991, the Campylobacter Subcommittee will meet 8:30 a.m. to 4:30 p.m.; and

(3) Wednesday, November 6, 1991, the Seafood Subcommittee will meet 12:30 a.m. to 5 p.m.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to the meeting in order that they may be considered and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. In submitting comments, please reference the docket number appearing in the heading of this notice. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447–9150.

Done at Washington, DC, on October 10, 1991.

Ronald J. Prucha,

Acting Administrotor.

[FR Doc. 91–25019 Filed 10–16–91; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Eastern Region; Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire, and Maine, Pennsylvania, Vermont and New York, West Virginia, and Wisconsin; Legal Notice of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On May 10, 1991, the Eastern Region published a list of newspapers in which decisions would be published in accordance with 36 CFR 217.5(d). This list must be updated twice annually.

The May 10, 1991, Eastern Region list will remain unchanged except for the Ottawa National Forest, Iron River Ranger District. District Decisions will be published in the legal notice section of the newspaper listed in the Supplemental Information section of this notice.

FOR FURTHER INFORMATION CONTACT: Joni Sue Hanson, Regional Appeals Coordinator, Eastern Region, Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, Area Code 414–297–3661.

SUPPLEMENTARY INFORMATION: The Deciding Officers in the Eastern Region, Ottawa National Forest, Ranger Districts will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspaper. As provided in 36 CFR 217.5(d), the timeframe for appeal shall be based on the date of publication of a notice of decision in the primary newspaper.

Ottawa National Forest, Michigan

District Ranger Decisions

Bergland District, Bessemer District, Kenton District, Ontonagon District, and Watersmeet District: Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan Iron River District: Iron River Reporter, published in Iron River, Iron County, Michigan.

Dated: October 3, 1991.

James R. Jordan,

Deputy Regional Forester Resources.

[FR Doc. 91–24924 Filed 10–16–91; 8:45 am]

BILLING CODE 3410–11–M

Revised Notice of Intent in Preparing an Environmental Impact Statement for the Proposed Lakewood Raw Water Pipeline in Roosevelt National Forest, Boulder County, CO (Original Notice of Intent Printed in the Federal Register April 4, 1990)

AGENCY: Forest Service, USDA.

ACTION: Notice; Revised Notice of Intent in Preparing Environmental Impact Statement (EIS). This notifies the public that there has been a delay in preparing the EIS. This changes the date the Draft EIS will be filed with the Environmental Protection Agency and made available to the public and presents new information about the project.

SUMMARY: The Forest Service is preparing an Environmental Impact Statement (EIS) on a proposal to construct a raw water pipeline adjacent to an existing pipeline. The draft EIS has been delayed because the data collection and analysis have taken longer than was expected. The draft EIS was expected to be filed with the Environmental Protection Agency (EPA) October 1990. The draft EIS is now expected to be filed with the EPA and available for public review in December 1991. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The existing pipeline runs northeast of Lakewood Reservoir to Betasso water treatment plant which is approximately 2½ miles west of Boulder, Colorado. A special use permit will be required for this project as dictated by the Federal Land Policy and Management Act of 1976 (90 Stat. 2743).

FOR FURTHER INFORMATION CONTACT: Michelle J. Nolde, District Ranger, Boulder Ranger District, 2995 Baseline Road, Boulder, Colorado 80303, or telephone Mary Ann Chambers, District Planner (303) 444–6001.

SUPPLEMENTARY INFORMATION: The project under consideration will replace an existing pipeline constructed in the 1950s. The pipeline will provide water to the existing Betasso Water Treatment Plant serving the City of Boulder. The previous analysis of replacement of this pipeline from Sugarloaf Saddle to the Betasso Water Treatment Plant by Boulder resulted in the preparation of an Environmental Assessment (EA) by Boulder, issuance of a Decision by the Forest Service, appeal by local residents, and remand of the decision to the Arapaho and Roosevelt National Forests Supervisor. Boulder has identified new construction alternatives not previously presented in the application for a Special Use Permit or the EA and has since submitted an amended application for a Special Use Permit.

A range of alternatives will be considered. One of these alternatives will be a no action alternative. The EIS will analyze the cumulative effects of past, current, and projected activities for each of the alternatives.

Comments from other Federal, State and local agencies, organizations and individuals who may be interested in, or affected by the decisions, have been and will continue to be solicited. Scoping has been initiated through individual contracts and meetings beginning in the spring of 1987. Several issues have been identified including, but not limited to: Concern about soil erosion, loss of wetlands, noise, and effects the project will have on wildlife, visual resources, and archaeological sites. Contacts have been initiated with the Colorado Forest Service, Colorado Division of Wildlife, Boulder County Parks and Open Space, Boulder County Public Works, Colorado Environmental Coalition, Colorado Wildlife Federation, Sierra Club, and many other groups and individuals.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in December 1991. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period of the draft Environmental Impact Statement will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers at this early stage notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final Environmental Impact Statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period on the draft Environmental Impact Statement. The Forest Service can then meaningfully consider substantive comments and objections and respond to them in the final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing

the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Dated: October 7, 1991.

James C. Cruse,

Acting Forest Supervisor.

[FR Doc. 91-24925 Filed 10-16-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

The Consortia of American Businesses in Eastern Europe Grant Program

ACTION: Notice.

SUMMARY: The Department of Commerce (the "Department") has selected five applicants to participate in the Department's Consortia of American Businesses in Eastern Europe (CABEE) pilot grant program. Each of the five applicants is a non-profit consortium formed to assist for-profit U.S. member companies establish a commercial presence and to contribute to the privatization of economies in Eastern Europe. The grantees will be required to match federal funding. Each consortium will use the funding to help defray the costs of starting and operating the East European office. This notice announces the five grantees.

FOR FURTHER INFORMATION CONTACT: George Muller, Office of Export Trading Company Affairs, Trade Development, U.S. Department of Commerce, telephone (202) 377-5131. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On June 26, 1991, 56 FR 29378, the Department announced the availability of federal grant funds under the CABEE program and its intention to select non-profit organizations to participate as grantees under the program.

Names of Selected Grantees

American Building Products Export/ Import Council,

Food Processing Machinery & Supplies Association,

Sun-Diamond Growers of California,

Telecommunications Industry Association,

Water Pollution Control Federation.

Dated: October 10, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-24963 Filed 10-16-91; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Inspector General

Privacy Act of 1974; Addition of a Record System

AGENCY: Inspector General, DoD.

ACTION: Addition of a Record System.

SUMMARY: The Office of the Inspector General, Department of Defense, is proposing to add a new exempt system of records to its inventory to record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATES: The proposed action will be effective on November 18, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Send any comments to the Assistant Director, FOIA/PA Division, Assistant Inspector General for Investigations, 400 Army Navy Drive, Arlington, VA 22202-2884. Telephone (703) 697-6035.

SUPPLEMENTARY INFORMATION: The Office of Inspector General record system notices for records systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the Federal Register as follows:

50 FR 22279—May 29, 1985 (Compilation, changes follow)
52 FR 26547—Jul. 15, 1987
52 FR 35754—Sep. 23, 1987
54 FR 24377—Jun. 7, 1989
54 FR 33956—Aug. 17, 1989
55 FR 18152—May 1, 1990
55 FR 48681—Nov. 21, 1990
56 FR 40878—Aug. 16, 1991
56 FR 46171—Sep. 10, 1991

A new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, was submitted on October 1, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985).

October 7, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG-15

SYSTEM NAME:

Special Inquiries Investigative Case File and Control System.

SYSTEM LOCATION:

Office of the Assistant Inspector General for Departmental Inquiries, Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 1027, Arlington, VA 22202-2884.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Individuals who provide initial complaints resulting in administrative investigations conducted by Office of the Assistant Inspector General for Departmental Inquiries (OAIG-DI) related to violations of laws, rules, or regulations or mismanagement, gross waste of funds, abuse of authority, or a danger to the public health and safety; subjects of administrative investigations conducted by the OAIG-DI; or individuals identified as having been adversely affected by matters under investigation by the OAIG-DI.

CATEGORIES OF RECORDS IN THE SYSTEM:

Materials relating to allegations received and documentation created as a result of action by the OIG, including reports, records of action taken, and supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95-452), as amended; and DoD Directive 5106.1 (32 CFR part 376).

PURPOSE(S):

To record complaints, allegations of wrongdoing, and requests for assistance; to document inquiries, research facts and circumstances, sources of information, conclusions and recommendations; to record actions taken and notifications of interested parties and agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, AND PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Office of the Inspector General compilation of record system notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records are stored in conventional media—file folders and personal computer.

RETRIEVABILITY:

Automated and paper records pertaining to administrative investigation cases are indexed through the use of a computerized cross-reference system; they may be retrieved by individual names or case numbers.

SAFEGUARDS:

Records, both paper and automated, are accessible only to OAIG-DI personnel having official need therefor and are stored in locked rooms. The automated system is password protected, and regular back-ups of data are performed.

RETENTION AND DISPOSAL:

Automated and paper records are retained for a period of ten years following completion of final action.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, FOIA/PA Division, Office of the Assistant Inspector General for Investigations, 400 Army Navy Drive, Arlington, VA 22202–2884.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written, notarized inquiries to the Assistant Director, FOIA/PA Division, Office of the Assistant Inspector General for Investigations, 400 Army Navy Drive, Arlington, VA 22202–2884. The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written, notarized authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

RECORDS ACCESS PROCEDURES:

Individuals may access agency records or information about themselves should address written, notarized inquiries to the Assistant Director, FOIA/PA Division, Office of the Assistant Inspector General for Investigations, 400 Army Navy Drive, Arlington, VA 22202–2884. The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written, notarized authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

CONTESTING RECORD PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned are published at 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information was obtained from sources, subjects, witnesses, all levels of government, private businesses, and nonprofit organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this record system may be exempt pursuant to 5 U.S.C. 552(k)(2) as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in CFR part 312. For additional information contact the system manager.

[FR Doc. 91–24535 Filed 10–16–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; Amend a Record System

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend one existing record system to its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). When the notice was first published, the retention and disposal paragraph did not include the retention period since the National Archives and Records Administration had not issued a formal disposition authority for drug testing program files. NARA has now issued that authority and this amendment incorporates that disposal rule.

DATES: The proposed action will be effective without further notice on November 18, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Ms. Susan Salus, DLA–XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100. Telephone (202) 274–6234 or Autovon 284–6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51898, Dec. 20, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37495, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Mar. 28, 1988
53 FR 21511, Jun. 8, 1988
53 FR 26105, Jul. 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48708, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989
55 FR 21918, May 30, 1990 (DLA Address Directory)
55 FR 32284, Aug. 8, 1990
55 FR 34050, Aug. 21, 1990
55 FR 42755, Oct. 23, 1990
55 FR 53178, Dec. 27, 1990
56 FR 5806, Feb. 13, 1991
56 FR 8987, Mar. 4, 1991
56 FR 11207, Mar. 15, 1991
56 FR 19838, Apr. 30, 1991
56 FR 31395, Jul. 10, 1991 (Updated Indexing System)
56 FR 35852, Jul. 29, 1991

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, in its entirety.

This notice is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), which requires the submission of an altered system report.

Dated: October 11, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S380.50 DLA–K

SYSTEM NAME:

DLA Drug-Free Workplace Program Records (55 FR 34050, Aug. 21, 1990).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records relating to test selection, scheduling, collection, handling, and results will be destroyed when 3 years old; records relating to individual notification and acknowledgment will be destroyed when the individual separates from the testing designated position."

* * * * *

S380.50 DLA–K

SYSTEM NAME:

DLA Drug-Free Workplace Program Records.

SYSTEM LOCATION:

Defense Logistics Agency (DLA) Civilian Personnel Service Support Office (DCPSO), 3990 East Broad Street, Columbus, OH 43216–5000.

DLA Headquarters offices; DLA Primary Level Field Activities (PLFA); and offices of contractors who perform functions such as collection of urine specimens, laboratory analysis, and

medical review of confirmed positive laboratory findings. Official mailing addresses are published as an appendix to the agency's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA employees and individuals who have applied to DLA for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to program implementation and administration, including selection, notification, and testing of individuals; collection and chain of custody documents; urine specimens and drug test results; consent forms; rebuttal correspondence; and similar records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 12564, "Drug-Free Federal Workplace" and 9397; Pub. L. 100–71; and 5 U.S.C. 7301.

PURPOSES:

The system is established to maintain records relating to the selection and testing of DLA employees and applicants for DLA employment for use of illegal drugs. The records will provide the basis for taking appropriate action in reference to employees who test positive for use of illegal drugs.

Records may be used by authorized contractors for the collection process; assigned Medical Review Officials; the Administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and agency supervisory or management officials having authority to take adverse personnel action against such an employee when test results are positive.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:

In order to comply with provisions of 5 U.S.C. 7301, the DLA "Blanket Routine Uses" that appear at the beginning of the agency's compilation do not apply to this system.

Records may be disclosed to a court of competent jurisdiction when required by the United States Government to defend against a challenge to related adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk and in paper form.

RETRIEVABILITY:

Records are retrieved by name of activity, name of employee or applicant, position title, position description number, Social Security Number, ID number, or any combination of these.

SAFEGUARDS:

Records are maintained in a secured area or on automated media with access limited to authorized personnel whose duties require access. Records relating to individual positive test results are kept in locked cabinets. Employee and applicant records are maintained and used with the highest regard for employee and applicant privacy.

RETENTION AND DISPOSAL:

Records relating to test selection, scheduling, collection, handling, and results will be destroyed when 3 years old; records relating to individual notification and acknowledgment will be destroyed when the individual separates from the testing designated position.

SYSTEM MANAGER AND ADDRESS:

Deputy Chief, DLA Civilian Personnel Service Support Office, 3990 East Broad Street, Columbus, OH 43216–5000.

NOTIFICATION PROCEDURES:

Individuals seeking to inquire whether this record system contains information about themselves should contact their Office of Civilian Personnel at DLA Primary Level Field Activities where assigned or the Deputy Chief, DLA Civilian Personnel Service Support Office, 3990 East Broad Street, Columbus, OH 43216–5000. Official mailing addresses are published as an appendix to the agency's compilation of record systems notices.

Individuals must provide name; date of birth; Social Security Number; ID number (if known); approximate date of record; and DLA activity and position title.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this record system should contact the Deputy Chief, DLA Civilian Personnel Service Support Office, 3990 East Broad Street, Columbus, OH 43216–5000.

Individuals must provide name; date of birth; Social Security Number; ID number (if known); approximate date of record; and DLA activity and position title.

RECORD SOURCE CATEGORIES:

Records in this system are obtained from the individual to whom the records pertain; agency employees involved in the selection and notification of individuals to be tested; laboratories that test urine specimens for the presence of illegal drugs; physicians who review test results; and supervisors, managers, and other DLA officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91 25022 Filed 10–16–91; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 18, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information

collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title, (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: October 11, 1991.

Wallace R. McPherson, Jr.

Acting Director, Office of Information Resources Management.

Office of Management

Type of Review: New.
Title: Form 1880–MP: Reviewer's Assessment of the Review Process.
Frequency: One-time only.
Affected Public: Individuals or households; Federal agencies or employees.
Reporting Burden:
Responses: 2,000;
Burden Hours: 500.
Recordkeeping Burden:
Recordkeepers: 0;
Burden Hours: 0.
Abstract: This form will be completed by grant application and contract proposal reviewers. The Department will use the information to assess and improve the grant and contract review process.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Status Report on Homeless Children and Youth from State Educational Agencies under the Stewart B. McKinney Homeless Assistance Act.
Frequency: Biennially.
Affected Public: State or local governments.
Reporting Burden:
Responses: 54;
Burden Hours: 4,320.
Recordkeeping Burden:
Recordkeepers: 54;
Burden Hours: 270.
Abstract: State educational agencies will submit information to the Department regarding numbers and locations of homeless children and youth, problems relating to the access of free appropriate public education and the difficulties in identifying their special needs. The Department will use this information to report to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Application for State Grants Program for Technology-Related Assistance for Individuals with Disabilities.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 20;
Burden Hours: 600.
Recordkeeping Burden:
Recordkeepers: 0;
Burden Hours: 0.
Abstract: This form will be used by State agencies to apply for funding under the Technology-Related Assistance for Individuals with Disabilities Program. The Department uses the information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Traumatic Brain Injury Best Practice Study.
Frequency: One time.
Affected Public: Individuals or households; State or local governments.
Reporting Burden:
Responses: 2,644;
Burden Hours: 1,598.
Recordkeeping Burden:
Recordkeepers: 0;
Burden Hours: 0.
Abstract: This evaluation will identify current Vocational Rehabilitation (VR) agency policy and practice in serving clients with Traumatic Brain Injury (TBI), describe their strengths and weaknesses, and identify best practices that RSA may suggest for implementation. The Department uses the information for program evaluation and to make recommendations for improvements of services.

Office of Postsecondary Education

Type of Review: New.
Title: Application for the FIPSE Special Focus Competition: Projects in Science and the Humanities.
Frequency: One time.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 100;
Burden Hours: 1,500.
Recordkeeping Burden:
Recordkeepers: 0;
Burden Hours: 0.
Abstract: This form will be used by State Educational Agencies to apply for funds under the FIPSE Special Focus Competion Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision.
Title: Reports of Financial Status and Performance for the Veterans Education Outreach Program.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 1,000;
Burden Hours: 2,000.
Recordkeeping Burden:
Recordkeepers: 0;
Burden Hours: 0.
Abstract: Institutions of higher education that have participated in the Veterans Education Outreach Program are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

[FR Doc. 91–25032 Filed 10–16–91; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER2–17–000, et al.]

PacifiCorp Electric Operations, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 9, 1991.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp Electric Operations

[Docket No. ER92–17–000]

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on October 2, 1991, tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, a Long-Term Power Sales Agreement ("Agreement") between PacifiCorp and Western Area Power Administration ("Western") dated October 1, 1991.

Under terms of the Agreement, PacifiCorp will sell to Western firm capacity and energy for the period of December 1, 1991 through December 31, 2011.

PacifiCorp requests that an effective date of December 1, 1991 be assigned to the Agreement, this date corresponding to commencement of service under the Agreement.

Copies of this filing were supplied to Western, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Vermont Electric Power Co., Inc.

[Docket No. ER91-690-000]

Take notice that Vermont Electric Power Company, Inc. (VELCO) on September 30, 1991, tendered for filing proposed changes in its FERC Tariff No. 244, entitled, Superseding Three Party Power Agreement.

The nature of the change is as follows: Under the Agreement, Central Vermont Public Service Corporation (CVPSC) and Green Mountain Power Corporation (GMP) assigned to VELCO certain portions (8.5291% and 4.9726%, respectively) of the so-called Vermont Quota, which is the portion (55%) of the capability and net electric output of the Vermont Yankee nuclear generating station made available to those companies under a separate contract with Vermont Yankee Nuclear Power Corporation. The portions assigned to VELCO are resold to other Vermont utilities under still another contract, the Power Purchase Agreement, Rate Schedule No. 234.

As of May 1, 1991, CVPSC merged with Allied Power and Light Company (Allied), a small Vermont investor-owned utility, which was one of VELCO's customers under the Power Purchase Agreement. As a consequence of the merger, Allied's existence terminated, and the Vermont Yankee power that it had theretofore purchased from VELCO is now retained by CVPSC rather than being assigned by CVPSC to VELCO for resale. The amendment reflects CVPSC's retention of this power by reducing the amount of the Vermont Quota it assigns to VELCO from 8.5291% to 8.2089%.

VELCO states that the reasons for the change are as follows: The change is necessary to accommodate the reduction in the amount of power assigned by CVPSC to VELCO following CVPSC's merger with Allied.

Copies of the filing were served upon the following: Central Vermont Public Service Corporation, Green Mountain Power Corporation, the Vermont Department of Public Service, and the Vermont Public Service Board.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. The Connecticut Light & Power Company

[Docket No. ER92-5-000]

Take notice that The Connecticut Light and Power Company ("CL&P") (a subsidiary of Northeast Utilities) tendered for filing a Consolidated Amendment dated as of September 30, 1991 (the "Consolidated Amendment") between the CL&P and the Connecticut Municipal Electric Energy Cooperative ("CMEEC"). The Consolidated Amendment amends the following eight Life-of-Unit Contracts between CL&P and CMEEC ("Life-of-Unit Contracts") dated September 15, 1991:

Unit Contract—Norwalk Harbor Units Nos. 1, 2, 3 Rate Schedule FERC No. 224;
Unit Contract—Montville Units Nos. 5, 6, 10, 11 Rate Schedule FERC No. 226;
Unit Contract—Devon Units Nos. 7, 8, 9 Rate Schedule FERC No. 227;
Unit Contract—Bulls Bridge Units Nos. 1, 2, 3, 4, 5, 6 Rate Schedule FERC No. 231;
Unit Contract—Shepaug Unit No. 1 Rate Schedule FERC No. 232;
Unit Contract—Northfield Mountain Units Nos. 1, 2, 3, 4 Rate Schedule FERC No. 229;
Unit Contract—Millstone Point Units Nos. 1, 2 Rate Schedule FERC No. 228; and
Unit Contract—Middletown Units Nos. 1, 2, 3, 4, 10 Rate Schedule FERC No. 256;

CL&P states that the Consolidated Amendment changes the eight Life-to-Unit Contracts pursuant to settlement arrangements between the parties. The changes are intended to update the unit contracts to reflect changed conditions and resolve ambiguities with respect to the contracts.

CL&P requests waiver of the Commission's customary notice requirements in order to permit the rate schedule changes to become effective on November 1, 1990.

CL&P states that copies of the filing were served upon CMEEC and on the Connecticut Department of Public Utility Control.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Co. of New York, Inc.

[Docket No. ER92-13-000]

Take notice that on October 2, 1991, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing a Rate Schedule and two Supplements, constituting an agreement to provide transmission service for the Power Authority of the State of New York (the "Authority") The Rate Schedule provides, on an interim (two months) basis, for transmission of power and energy sold by the Authority to certain Economic Development Power Customers on Long Island, at rates of $1.15 per kW per month or $2.53 per kW per month, depending on the facilities used. Supplement No. 1 provides for a decrease in the monthly transmission charges from $1.15 to $1.07 and from $2.53 to $2.43 per kilowatt, thus decreasing annual revenues under the Rate Schedule by a total of $9,203. Supplement No. 2 is the final agreement between Con Edison and the Authority on essentially the same terms as the Rate Schedule; it supersedes the Rate Schedule and continues the same decreased rates provided for in Supplement No. 1. Con Edison has requested waiver of notice requirements so that the Rate Schedule can be made effective as of June 1, 1991; Supplement No. 1 as of July 1, 1991; and Supplement No. 2 as of August 1, 1991.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Co.

[Docket No. ER91-692-000]

Take notice that on September 30, 1991, Minnesota Power & Light Company tendered for filing a Unit Participation Power Sales Agreement with Interstate Power Company, pursuant to Service Schedule A of the Mid-Continent Area Power Pool Agreement.

MP&L requests waiver of the Commission's notice requirements and an effective date of May 1, 1992.

Copies of the filing have been served on Interstate, the Minnesota Public Utilities Commission and the Minnesota Department of Public Service.

Comment date: October 23, 1991, in accordance with Standard Paragraph E end of this notice.

6. Florida Power & Light Co.

[Docket No. ER91-693-000]

Take notice that Florida Power & Light Company, on September 30, 1991, tendered for filing the following two agreements: (1) Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Metropolitan Dade County, Florida, and (2) Dade County Resource Recovery Facility Interconnection Agreement Between Florida Power & Light company and Metropolitan Dade County, Florida.

FPL requests that the agreements be made effective November 1, 1991.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. El Paso Electric Co.

[Docket No. ER92-1-000]

Take notice that on October 1, 1991, El Paso Electric Company ("El Paso") and Citizens Utilities Company ("Citizens") tendered for filing an executed Interchange Agreement between themselves with one service schedule, Service Schedule A—Economy Energy Interchange. The electrical interconnections exist through third-party systems which will allow scheduled interchange of power and energy to take place between the parties' respective systems. El Paso and Citizens request that the agreement be allowed to become effective on September 3, 1991 in accordance with its terms.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Power & Light Co.

[Docket No. ER92-16-000]

Take notice that on October 2, 1991, Puget Sound Power & Light Company ("Puget") tendered for filing a Transmission Service Agreement among Puget, the City of Seattle ("Seattle"), and the City of Tacoma ("Tacoma") dated as of April 1, 1991. Under the Transmission Service Agreement ("Agreement"), Puget may make available to Seattle and Tacoma surplus transmission capacity on designated transmission paths of its electric system.

Copies of the filing were served upon Seattle and Tacoma.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Alaska Power Administration

[Docket No. EF92-1021-000]

Take notice that on October 1, 1991, the Assistant Secretary, Conservation and Renewable Energy, of the Department of Energy submitted Rate Schedules SN-F-4, SN-NF-5, SN-NF-6, and SN-NF-7, applicable to power from Alaska Power Administration's (APA) Snettisham project, for confirmation and approval on a final basis. Rate Schedule SN-F-3 for firm energy was previously confirmed and approved by FERC on May 23, 1990, for a period of two years, Docket No. EF89-1021-000.

The rate schedules mentioned above have been confirmed and approved on an interim basis effective October 1, 1991 for a period of 12 months by the Assistant Secretary, Conservation and Renewable Energy, of the Department of Energy. The Department requests the approval of the Commission of the adjusted rates for a period not to exceed five years with the understanding that the rates can be adjusted at an earlier date if needed to comply with the cost recovery criteria. The rate schedules are submitted for confirmation and approval on a final basis pursuant to authority vested in the Commission by Delegation Order No. 0204-1008, Amendment No. 2 (56 FR 41,835; August 23, 1991).

Comment date: October 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. St. Joseph Light & Power Co.

[Docket No. ER92-18-000]

Take notice that St. Joseph Light & Power Company (SJLP) on October 2, 1991, tendered for filing the March 5, 1990 Amendment to the Electric Interconnection and Interchange Agreement between SJLP and Iowa Power Inc. (Iowa Power). The Amendment to the Interchange Agreement replaces all the existing service schedules except for Distribution Energy and adds six new classes of power and energy called "Short Term Power", "System Participation Power", System Energy Service", "Term Energy", "Unit Participation Power", and "System Capacity Service". SJLP also seeks to modify its Third Party Purchase and Resale Transaction (FERC 84) rate by adding "up to" language. SJLP requests that the filing of the Amendment be permitted to become effective as of February 1, 1990.

At the same time as the said Amendment SJLP also tendered for filing the October 5, 1989 Letter Agreement modifying the Power Flow Agreement between SJLP and Iowa Power. The Letter Agreement reduces the monthly loss charge to Iowa Power. SJLP requests that the Letter Agreement filing become effective as of August 1, 1989.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. The United Illuminating Co.

[Docket No. ER92-14-000]

Take notice that on October 2, 1991, The United Illuminating Company (UI) tendered for filing rate schedules for coordination transactions involving the exchange with or sale of capacity and energy to Long Island Lighting Company (LILCO). The sales are pursuant to a System Power Sales Agreement (Agreement) dated November 5, 1990 and UI proposes that service under the Agreement commence on that same date.

Copies of the filing were served upon LILCO and on the New York Public Service Commission.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Central Vermont Public Service Corp.

[Docket No. ER92-12-000]

Take notice that on October 1, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing a tariff that provides for sales of capacity and energy at negotiated rates subject to a ceiling equal to 100% of the fully allocated costs of the units providing the service. The tariff provides for the sale of unit capacity, entitlements and system incremental capacity.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Dayton Power and Light Co.

[Docket No. ER91-691-000]

Take notice that the Dayton Power and Light Company (Dayton) tendered for filing on September 30, 1991, and executed Letter Agreement extending the term of the existing Purchase and Resale Agreement (Agreement) between Dayton and the Village of Tipp City, Ohio (Village).

The proposed Letter Agreement extends the term of the existing Agreement to allow Village to continue to purchase energy requirements from third parties who will use their existing Interconnection Agreement Rate Schedules to deliver the energy requirements to Dayton for final delivery to Village. An October 1, 1991, effective date has been requested. A copy of this filing was served upon Village and The Public Utilities Commission of Ohio.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24979 Filed 10-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-161-000, RP89-172-000, CP91-687-000 and CP90-2275-000]

ANR Pipline Co.; Informal Settlement Conference

October 9, 1991

Take notice that an informal settlement conference will be convened in this proceeding commencing on October 21, 1991, at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, in Hearing Room 1, for the purpose of exploring the possible settlement of one above-referenced dockets. The conference will resume at 10 a.m. on October 22, 1991.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Michael D. Cotleur at (202) 208-1076 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24980 Filed 10-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI91-128-000]

Cogen Energy Technology, L.P.; Application for a Blanket Certificate With Pregranted Abandonment

October 9, 1991.

Take notice that on October 3, 1991, Cogen Energy Technology. L.P. (CETLP), c/o Cogen Energy Technology, Inc., Tower East, suite 703, 20600 Chagrin Boulevard, Shaker Heights, Ohio 44122, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of natural gas subject to the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CETLP to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24981 Filed 10-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1281-017]

Natural Gas Pipeline Co. of America; Application for Amendment to Certificate

October 9, 1991.

Take notice that pursuant to section 7 of the Natural Gas Act, 15 U.S.C. 717f, and the Commission's Regulations (18 CFR part 157), Natural Gas Pipeline Company of America (Natural) on September 25, 1991 tendered for filing an application for an amendment to the existing certificate of public convenience and necessity in the above captioned docket authorizing a Gas Inventory Demand Charge (GIDC).

Natural requests authority to (1) extend the term of the GIDC from the currently authorized two (2) years to five (5) years; and (2) make certain conforming changes in the Tariff governing the GIDC as extended. Natural's current GIDC terminates on December 1, 1992.

Natural also requests that its application be consolidated with the restructuring proceeding to be implemented pursuant to Commission action in Docket No. RM91-11-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24982 Filed 10-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-20-000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

October 9, 1991.

Take notice that on October 3, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP92-20-000 a request pursuant to §§ 157.205, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new delivery meter station, to be called the Moab No. 2 Meter Station, and to add the new station as a delivery point for firm gas sales service under Northwest's Rate Schedule DS-1 to Utah Gas Service Company (Utah Gas), under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that Utah Gas has requested Northwest to establish a new meter station, the Moab No. 2 Meter Station, to be located in Section 2, Township 27 South, Range 22 East, in San Juan County, Utah. Northwest advises it is Northwest's understanding that, because of the addition of new residential and commercial customers, Utah Gas is experiencing operational problems on its distribution system in the Moab area and requires this new meter station in order to ensure reliable service to its customers and to facilitate service to future new residential and commercial end users.

It is stated that Northwest has entered into a letter agreement dated August 21, 1991, with Utah Gas which provides that Northwest would construct the Moab No. 2 Meter Station with a maximum delivery capacity of 2,000 dekatherms per day at a minimum delivery pressure of 150 psig. It is further stated that the meter station would consist of one four-inch turbine meter, two one-inch

monitor regulator runs containing two regulators each, a three-inch tap on Northwest's 26-inch mainline, and auppurtenances.

Northwest explains that, to facilitate deliveries to the proposed Moab No. 2 Meter Station, Northwest and Utah Gas have revised the Exhibit A to the May 1, 1989, DS–1 Service Agreement to add the new Moab No. 2 Meter Station as a delivery point for sales service to Utah Gas, without making any changes to the existing contract demand or point specific maximum daily delivery obligation under the agreement.

Northwest states that the estimated cost of the Moab No. 2 Meter Station is approximately $150,743. Northwest estimates that the incremental annual volumes to be delivered at the proposed delivery meter initially would be approximately 26,700 dekatherms. It is stated that a comparison of the incremental cost of service and the incremental revenues associated with this station resulted in Northwest agreeing to pay $55,000 toward the total actual costs and Utah Gas agreeing to pay the remainder of all actual construction costs pursuant to the terms and conditions of section 11 of the Facilities Reimbursement provisions of Sheets 317–317B of Northwest's FERC Gas Tariff, First Revised Volume No. 1–A.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24983 Filed 10–16–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Special Research Grant Program Notice 91–17: Assessment of Models of the Aquatic Effects of Acidic Deposition

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Program Analysis, Office of Energy Research of the Department of Energy, hereby announces its interest in receiving applications for special research grants that seek support for conducting assessment of models of the aquatic effects of acidic deposition.

The purpose is to estimate from existing or soon-to-be-collected experimental or monitoring data the degree that the aquatic model MAGIC successfully computes the actual chemical changes in aquatic systems resulting from past or future acidic deposition. The reliability of forecasts of this widely used aquatic model will be assessed. Modifications to MAGIC to address weaknesses in the model will be performed.

Applicants must enlist the aid of experts to identify, describe, and assess on a worldwide basis, the most promising data that could be used for model testing. Experts in the development and application of the model are also needed.

APPLICATION AND AWARD INFORMATION: Information about submission of applications, eligibility, limitations, evaluation, selection processes, and other policies and procedures may be found in the Application and Guide for the Special Research Grant Program. The application kit and guide and copies of 10 CFR part 605 are available from Dr. Walter L. Warnick, Office of Program Analysis, Office of Energy Research, U.S. Department of Energy, ER–32, Washington, DC 20585. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 353–3122 or FTS 233–3122. However, effective November 9, 1991, the commercial telephone prefix will change, making the telephone number (301) 903–3122. The Catalog of Federal Domestic Assistance number for this program is 81.049.

DATES: Formal applications submitted in response to this notice should be received by November 19, 1991.

ADDRESSES: Formal applications sent by U.S. Mail should be addressed to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64, Washington, DC 20585, ATTN: Program Notice 91–17. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64/GTN, 19901 Germantown Road, Germantown, MD 20874.

SUPPLEMENTARY INFORMATION: Acidic deposition contributes to the acidity of surface waters in certain areas of the U.S. and the world. To forecast how the acidity and other chemical characteristics of surface waters will respond to future deposition, computer models have been developed. The model most used by the National Acid Precipitation Assessment Program was MAGIC.

In order to gauge the reliability of model forecasts, one would ideally perform blind tests; i.e., one would experimentally vary acidic deposition, monitor chemical changes in watersheds and surface water, and compare these changes to model forecasts. Because of constraints of funding and practicality, such tests have not been performed.

In lieu of ideal tests, it is nevertheless possible to obtain an indication of the reliability of models. One such indication is the comparison of model hindcasts with historical records of aquatic chemistry. Because such historical records are sparse and of questionable reliability, it is necessary to reconstruct the historical record. An important example of a comparison of model hindcasts and reconstructed surface water chemistry is "Comparison of MAGIC and Diatom Paleolimnological Model Hindcasts of Lukewarm Acidification in the Adirondack Region of New York," Sullivan, T.J.; Bernert, J.A.; Jenne, E.A.; Eilers, J.M.; Cosby, B.J.; Charles, D.F.; Selle, A.R.; Pacific Northwest Laboratory, March 1991. This comparison revealed significant differences.

Another type of indicator of model reliability would be comparing model output against data collected at watershed manipulation experiments. The grantee will identify such experiments and work with the investigators to sue the data to test MAGIC.

Differences between experimental or monitoring data and model forecasts or hindcasts or other weaknesses identified will point the direction for modifications to the model. The grantee will make such modifications and test them.

The principal investigator of the assessment must be an individual who is competent and accomplished in appropriate scientific and technical areas. Competence and accomplishments shall be described in

the application and include industrial or academic experience, research publications, contributions while serving as as expert, consultant services, honors and awards, and education including advanced degrees and other academic qualifications. The principal investigator also shall be an individual with demonstrated ability to conduct environmental science assessments and manage individual experts and groups of experts in the timely and successful identification, analysis, distillation and documentation of scientific and technical information. These demonstrated abilities shall be documented in the application.

The applicant, in order to address adequately and competently the full scope of this endeavor and at sufficient technical depths in all major topical areas, must enlist the aid of other scientific/technical experts. The application shall provide tentative identification of all proposed experts and their present affiliation. All experts, both foreign and domestic, are to be individuals who are competent and accomplished in a scientific or technical discipline directly related to the research assessment. Technical competence and accomplishments of each expert shall be described in the application and should include the individual's experience, research publications, consultant services, contributions while serving as an expert with other groups, honors and awards, professional experience, and education including advanced degrees and other academic qualifications. The expected contribution of each expert to the assessment's objectives should be identified. The overall technical expertise of the group of experts, when combined with the technical expertise of the principal investigator, should be shown to be adequate to cover the various scientific and technical disciplines involved in the assessment.

These experts will assist the principal investigator in accomplishment of the assessment's objectives, especially in writing major sections of the required final report. They are also expected to conduct technical discussions with other experts, specialists, researchers, and research program managers in the scientific and technical areas; conduct site visits to laboratories and other facilities where research and development directly related to the subject area is conducted and managed; and review and evaluate recent and relevant research including scientific and technical literature.

The initial composition of a group of experts, other consultants, and any subsequent changes must be approved by the Program Manager and Contracting Officer.

Applications also should include the following: a schedule of the assessment's major activities including the tentative content of meetings of various teams of the experts, a description of anticipated site visits to publicly and privately funded facilities, a description of all conferences to be attended as a part of assessment activities, and a description of the methodology for obtaining a peer review of the assessment results.

The applicant is expected to supply the personnel, facilities, and materials necessary to accomplish the objectives of the assessment as described in this notice.

APPLICATION REVIEW AND AWARD INFORMATION: Applications will be reviewed in accordance with the Energy Research Merit Review System, published in the **Federal Register**, March 11, 1991 (56 FR 10244). Subject to the availability of appropriated FY 1992 funds, one grant award at approximately $160,000 per year is planned. The grant award will be for a 2-year period, funded 1 year at a time. The Catalog of Federal Domestic Assistance number for this program is 81.049.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91-25023 Filed 10-16-91; 8:45 am]

BILLING CODE 6450-01-M

Special Research Grant Program Notice 91-16: Continental Scientific Drilling Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Division of Engineering and Geosciences, Office of Basic Energy Sciences, Office of Energy Research, U.S. Department of Energy, hereby announces its interest in receiving applications for Special Research Grants to support geophysical and geochemical studies for the Manson Impact Structure Core-Drilling Project of the Continental Scientific Drilling Program. The U.S. Geological Survey (USGS) and the Iowa Division of Natural Resources-Geological Survey plan to drill three to six continuously cored holes in the Manson structure in western Iowa for scientific purposes.

This notice requests applications for grants to support the use of samples from these core holes, and geophysical experiments in the core holes, to improve understanding of effects of the Manson Impact event on the terrestrial environment. The relevant focus of the Geosciences Research Program in the Office of Basic Energy Sciences is on the geophysics and geochemistry of rock-fluid systems deemed important in meeting the Nation's long-term energy needs with a high level of environmental sensitivity. A number of Special Research Grants involve collaboration with investigators at DOE Laboratories to take advantage of special and unique capabilities.

PREAPPLICATON INFORMATION: Potential applicants are encouraged to first submit a brief preapplication in accordance with 10 CFR 600.10(d)(2) which consists of two or three pages of narrative describing the research project objectives and method of accomplishment. No budget information or biographical data need be included, nor is an institutional endorsement necessary. The preapplication is an informal inquiry about the technical suitability of submitting a formal application. The preapplication will provide a basis for discussions between the National Science Foundation (NSF), DOE and USGS program managers regarding the appropriateness of specific projects for each agency. Telephone and telefax numbers are required to be part of the preapplication.

PREAPPLICATION DATES AND ADDRESSES: Preapplications should be received by November 1, 1991, and sent to the following address: Dr. William C. Luth, Engineering and Geosciences Division, Office of Basic Energy Sciences, ER-15/GTN, U.S. Department of Energy, Washington, DC 20585, (301) 353-5822. However, effective November 9, 1991, the commercial telephone prefix will change, making the telephone number (301) 903-5822.

A response indicating appropriateness of submitting a formal application along with application forms and detailed instructions for application preparation and submission will be sent to the applicant by November 15, 1991. Formal applications for a multi-year period are acceptable.

FORMAL APPLICATION DATES AND ADDRESSES: Formal applications must be received by January 15, 1992, and should be sent to the following address: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64/GTN, Washington, DC, 20585, ATTN: Program Notice 91-16.

When submitting applications by U.S. Postal Service express, any commercial mail delivery service, or when handcarried by the applicant, the delivery address is: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER–64, 19901 Germantown Road, Germantown, MD 20874, attn: Program Notice 91–16.

SUPPLEMENTARY INFORMATION: The Manson Impact Structure Core-Drilling Project is a project of the Interagency U.S. Continental Scientific Drilling Program (CSDP). The Continental Scientific Drilling and Exploration Act (Pub. L. 100–441), enacted September 22, 1988, calls for a national CSDP to enhance fundamental understanding of the composition, structure, dynamics, and evolution of the continental crust, and how such processes affect natural phenomena such as earthquakes, volcanic eruptions, transfer of geothermal energy, distribution of mineral deposits, occurrence of fossil fuels, and the nature and extent of aquifers; to advance basic earth sciences research and technological development; and to obtain critical data regarding the earth's crust relating to the isolation of hazardous wastes. The U.S. Department of Energy, the NSF, and the U.S. Department of the Interior (U.S. Geological Survey) implement the U.S. CSDP through their internal programs in agreement with an Interagency Accord on Continental Scientific Drilling (April 2, 1984). The three agencies coordinate the U.S. CSDP through an Interagency Coordinating Group for Continental Scientific Drilling. Because the programs of the participating agencies are separate but related, the coordinated interagency effort in continental scientific drilling is both cost effective and highly beneficial to the Nation.

The Manson Impact Structure Core-Drilling Project became a part of the U.S. CSDP in FY 1991 with the U.S. Geological Survey taking the lead in developing the project with the Iowa Division of Natural Resources/ Geological Survey. NSF and DOE intend to participate in the project through support of fundamental research involving studies of core samples and down-hole geophysical experiments as appropriate to the goals of their programs.

The overall goals of the Manson Impact Structure Core-Drilling Project are to improve understanding of the Manson impact cratering event, define its relationship to the K/T boundary, and examine the effects of this large impact event on the terrestrial environment. Basic objectives include refinement of the age of the impact, completion of a geochemical search for the type of impactor, clear definition of the relations between target rocks and ejected materials found in the K/T boundary zone, and assessment of potential climatic and environmental effects.

This feature was formed about 65 million years ago in response to a bolide impact into flat-lying sedimentary units that overlay a complex crystalline basement. The impact appears to have produced a large flat-floored crater approximately 35km in diameter with a large central uplift and terraced rims overlain by an ejecta blanket. Holes may be drilled to as deep as 450m and are intended to penetrate the post-impact depositional sequence filling the crater, the upper part of the central uplift, the surrounding breccia lens and melt-rock sequences, and the deformed rim and any remaining ejecta. Drilling during the first year of the project is expected to be completed by December 1, 1991, and it is anticipated that the holes will be available for geophysical logging until January 1, 1992. Core samples will be available for study in February 1992. The second year of drilling is currently planned to take place in mid-1992, with the holes being available for geophysical logging until the end of 1992. Core samples from the second phase of drilling will become available in late 1992 and early 1993. The total volume of core available for destructive testing and evaluation will be limited.

Application Review and Award Information

Applications will be reviewed in accordance with the Energy Research Merit Review System, published in the **Federal Register**, March 11, 1991 (56 FR 10244). Subject to availability of appropriated FY 1992 funds, as much as $300,000 will be available for award in Fiscal Year 1992. Actual allocation of funds will depend on the number and quality of applications received. Information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in 10 CFR part 605. The Catalog of Federal Domestic Assistance number for this program is 81.049.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91–25024 Filed 10–16–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34018; FRL 3935–9]

Cancellation of Pesticides for Non-Payment of 1991 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The October, 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) imposed a new requirement for payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last March 1 has gone unpaid for about 1590 registrations. Section 4(i)(5)(D) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all but a few of them have been issued within the past few days. The Agency is deferring cancellation for certain of these registrations, however, to permit time for affected users to explore alternatives to cancellation directly with the registrants.

DATES: Reports of agreements to support continued registration or transfer of the registrations for which cancellation is being deferred must be received by January 15, 1992.

FOR FURTHER INFORMATION CONTACT: John Jamula, Office of Pesticide Programs (H7504C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 210, CM # 2, 1921 Jefferson Davis Highway South, Arlington, VA 22202, (703) 557–4426.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 4(i)(5) of FIFRA as amended in October, 1988 requires that all pesticide registrants pay an annual registration maintenance fee, due by March 1 of each year, to keep their registrations in effect. This requirement applies to all registrations, granted under section 3, as well as those granted under Section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The 1990 Farm Bill recently amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use registrations when he determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. While the Agency is working with

the U.S. Department of Agriculture to develop criteria and procedures for implementing this new authority in 1992, there has not been time to provide for selective minor use waivers in the 1991 maintenance fee cycle.

In late January of 1991, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of March 1; a supplemental notice was sent in April, however, to registrants who had not responded after acknowledging receipt of the original notice. Late payments of the fees were accepted until May 31, when the actual process of cancellation was begun.

Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 19,100 section 3 registrations, or about 92 percent of the registrations on file in January. Fees have been paid for about 2,600 section 24(c) registrations, or about 81 percent of the total on file in January. Cancellations for non-payment of the maintenance fee affect about 1,313 section 3 registrations and about 276 section 24(c) registrations.

Because of the possible impacts of such a large number of cancellations, and especially the potential impact on minor uses of pesticides, the Agency has taken steps to minimize adverse impacts where possible.

II. Product Cancellations Not Affecting Status of Active Ingredient

Our analyses indicate that a significant number of these cancellations are simple housekeeping transactions, likely to have no discernable impact on pesticide markets or users. For 967 section 3 registrations (74 percent of the total for which no fee was paid) no production has been reported in 1989. This group includes all registrations for some 8 active ingredients with no recent production, which will be dropped from the registration rolls. Their disappearance is likely to have no discernable impact on pesticide markets or users.

We believe most of the cancelled 24(c) registrations for special local needs to be similarly obsolete. Over 54 percent of them were originally issued before 1986 —most for a finite period which has long since expired. We also know that a large proportion have been made obsolete by subsequent section 3 registrations for the same uses.

The remaining cancellations, 344 section 3 registrations and 126 section 24(c) registrations issued in the past 5 years, have been the principal focus of our further impact analyses. In most of these cases—all but 6 section 3 product registrations—the active ingredients will remain available in other registered products. We anticipate two types of impact for the bulk of these cancellations. First, some of these disappearing registrations will be survived in the market by substantially identical registrations. These substantially identical products may not, however, be readily available wherever a disappearing product was sold, so there may be local or regional disruptions while distribution patterns are adjusted. We expect these disruptions to be minor and temporary. The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the cancelled products until the due date for the next annual registration maintenance fee, March 1, 1992. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

Second, in some cases unique uses will disappear, although the active ingredients will remain available for different uses in other products. We cannot estimate how often this may happen. When it does, in addition to possible distribution problems there may be more serious impacts on users of the cancelled products. Once again, existing stocks of the cancelled products already in channels of trade will be usable to mitigate these impacts in the short term. For the longer term the mechanisms of section 3 amendments and 24(c) registrations will remain available to obtain replacement registrations.

Neither of these types of impact leaves users without the means to replace lost registrations; neither is considered to justify further deferral of cancellations for non-payment of the maintenance fee. Thus all these registrations for which the active ingredient will remain in other products have been cancelled.

III. Cancellations Leading to Disappearance of Active Ingredients

The most significant impacts will arise if an active ingredient that is now or recently has been available in the marketplace disappears. The Agency believes there are 31 registered active ingredients that fall into this category. Fourteen of these 31 ingredients have not been supported for reregistration; another 12 are involved in special review or are in products that are currently suspended; impacts of their disappearance have already been extensively addressed and will not be reconsidered here.

After deleting these 26 from the list of 31, some 5 active ingredients remain. These 5 active ingredients—none subject to prior regulatory action, and all likely to disappear as a consequence of these cancellations—span the range of pesticide uses summarized in the following Table 1:

TABLE 1.— SUMMARY DISTRIBUTION OF DISAPPEARING ACTIVE INGREDIENTS BY PREDOMINANT USE PATTERN

Use Pattern	Number of Chemicals	Number of Registrations
Agricultural/Ornamental Uses	4	8
Antimicrobial Uses	1	2
Totals	5	10

These 5 ingredients, grouped by these same general categories of use patterns, are individually listed along with the EPA Company Number of their registrants in the following Table 2.

TABLE 2.— ACTIVE INGREDIENTS WITH RECENT PRODUCTION PENDING CANCELLATION OF ALL PRODUCTS FOR NON-PAYMENT OF 1991 REGISTRATION MAINTENANCE FEES IN SEQUENCE BY BROAD USE PATTERN

Chemical Name	Registration No.	Product Name
Ammonium 3-amino-2,5-dichlorobenzoate (CAS 1076-46-6)	034704-00634	Ammonium Chloramben 10% Granules Pre-Emergence Weed Kil
	000264 FL-76-0011	Amchem Amiben
	001016 LA-84-0011	Amiben Chloramben Herbicide
	000264 OR-79-0003	Amchem Amiben
	000264 WA-79-0015	Amchem Amiben
Asphalt (CAS 8052-42-4)	000334-00238	Hysan's Tree Wound Dressing
Butoxyethyl 2-methyl-4-chlorophenoxyacetate (CAS 19480-43-4)	015440-00008	Technical Butoxy Ethanol Ester of MCPA
Potassium carbonate (CAS 584-08-7)	032240-00004	Crop Cure Cut'n Dry A Hay Conditioner
1-(Alkyl* amino)-3-aminopropane *(53%C12, 19%C14, 8.5%C16, 7%C8, 6.5%C10, 6%C18) (CAS 61791-58-0)	004643-00010	Dearcide 706
	004643-00027	Dearcide 732

Because these active ingredients are likely to disappear with their product registration, the Agency has deferred for 90 days the cancellation of these 10 registrations. During that time those registrants or other affected persons may make arrangements to continue the registration.

The names and addresses of the registrants are listed in sequence by the EPA Company Number in the following Table 3:

TABLE 3.—REGISTRANTS OF ACTIVE INGREDIENTS PENDING CANCELLATION FOR NON-PAYMENT OF 1991 REGISTRATION MAINTENANCE FEE

EPA Company	Registrant Name and Address
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000334	Dr. Kyle H. Sibinovic of Shaldra Biotest Inc., Agent For: Hysan Corp. (Lara ofc), Box 2610, W Bethesda, MD 20817.
001016	Union Carbide Corp., Box 12014 T.W. Alexander Drive, Research Triangle Park, NC 27709.
004643	Dearborn Division, W. R. Grace & Co-Conn., 300 Genesee St, Lake Zurich, IL 60047.
015440	Richard Otten, Agent For: A H Marks & Co. Limited, 5116 Woodvalley Dr, Raleigh, NC 27610.
032240	Domain, Inc., 201 . Knowles Ave., New Richmond, WI 54017.
034704	Platte Chemical Co., 419 18th St. (80632) Box 667, Greeley, CO 80632.

If the last section 3 registration for an ingredient disappears, the section 24(c) registration process is unlikely to be able to compensate for the loss. Thus EPA is temporarily deferring cancellation of these 10 products to allow adversely affected users to pursue alternatives to cancellation.

We encourge individual users or user groups who are concerned about the potential loss of these active ingredients to work directly with the identified registrants to persuade them to continue to support the ingredient, or to identify third parties who would be willing to support the ingredient if the registration were transferred to them. We also encourage users to consult with the Cooperative Extension Service or other local sources to identify alternatives to these active ingredients.

If the Agency is notified within 90 days of this notice at the address given above either (1) that the registrant will continue to support the registration, or (2) that an agreement has been reached to transfer the registration to another party, we will retain the registration in full active status as soon as the delinquent maintenance fee payment is received. It should be emphasized, however, that any such registrations would still be subject to all requirements for reregistration, including reregistration fees (except as they may be reduced through the statutory provisions for small businesses or low volume uses).

In addition to publishing this notice in the **Federal Register**, we are sending it directly to the States, to the U.S. Department of Agriculture, and to other parties who have previously expressed concern for minor uses. They should be receiving the notice at approximately the same time it is published. We hope that this extraordinary notification effort, and the deferral of cancellations for the most sensitive registrations, will serve to prevent any avoidable loss of critical minor use pesticides.

Because so many registrations are involved, it would be impractical to list them all in this notice. Complete lists of registrations cancelled for non-payment of the maintenance fee will, however, be available for reference during normal business hours in the OPP Public Docket, room 1128, CM # 2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional Office. Product-specific status inquiries may be made by telephone by calling toll-free 1-800-444-7255. To report agreements to support continued registration of any of the products for which cancellation has been deferred, for instructions on payment of delinquent maintenance fees for these products, or for further information on the maintenance fee program in general, contact John Jamula at the address listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 13, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-25042 Filed 10-16-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-51773; FRL 3999-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 47 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 91–1451, 91–1452, 91–1453, 91–1454, 91–1455, 91–1456, 91–1457, December 24, 1991.

P 91–1458, 91–1459, 91–1460, 91–1461, 91–1462, 91–1463, December 25, 1991.

P 91–1464, 91–1465, December 28, 1991.

P 92–1, 92–2, 92–3, 92–4, 92–5, 92–6, 92–7, 92–8, 92–9, 92–10, 92–11, 92–12, 92–13, 92–14, 92–15, 92–16, 92–17, 92–18, 92–19, 92–20, 92–21, 92–22, 92–23, 92–24, 92–25, 92–26, December 29, 1991.

P 92–27, 92–28, 92–29, 92–30, December 30, 1991.

P 92–37, 92–38, December 31, 1991.

Written comments by:

P 91–1451, 91–1452, 91–1453, 91–1454, 91–1455, 91–1456, 91–1457, November 24, 1991.

P 91–1458, 91–1459, 91–1460, 91–1461, 91–1462, 91–1463, November 25, 1991.

P 91–1464, 91–1465, November 28, 1991.

P 92–1, 92–2, 92–3, 92–4, 92–5, 92–6, 92–7, 92–8, 92–9, 92–10, 92–11, 92–12, 92–13, 92–14, 92–15, 92–16, 92–17, 92–18, 92–19, 92–20, 92–21, 92–22, 92–23, 92–24, 92–25, 92–26, November 29, 1991.

P 92–27, 92–28, 92–29, 92–30, November 30, 1991.

P 92–37, 92–38, December 1, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS–51773)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm. L–100, Washington, DC, 20460, (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. EB–44, 401 M St., SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 91–1451

Importer. Confidential.

Chemical. (G) Substituted-substituted-substituted-benzene polymer.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91–1452

Importer. Confidential.

Chemical. (G) Substituted-substituted-substituted-benzene polymer.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91–1453

Manufacturer. R.T. Vanderbilt Company.

Chemical. (G) Dialkyl-1,3,4-thiadiazole.

Use/Import. (S) Lubricating additive. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2000 mg/kg. Skin irritation: slight species (rabbit).

P 91–1454

Manufacturer. R.T. Vanderbilt Company, Inc.

Chemical. (G) 2-Alkylthio-5-arylthio-1,3,4-thiadiazole.

Use/Import. (S) Lubricating additive. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2000 mg/kg. Skin irritation: slight species (rabbit).

P 91–1455

Manufacturer. R.T. Vanderbilt Company, Inc.

Chemical. (G) 2-Alkylthio-1,3,4-thiadiazole.

Use/Import. (S) Lubricating additive. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2000 mg/kg. Skin irritation: slight species (rabbit).

P 91–1456

Manufacturer. Confidential.

Chemical. (G) Photochromic compound.

Use/Production. (G) Paint or ink additive. Prod. range: Confidential.

P 91–1457

Manufacturer. Confidential.

Chemical. (G) Cyano-ethylated dialkyl-polymer, actate salt.

Use/Production. (G) Softening of cellulose. Prod. range: Confidential.

P 91–1458

Manufacturer. Zeon Chemicals USA, Inc.

Chemical. (G) Acrylonitrile butadine polymer.

Use/Production. (S) Plasticizer. Prod. range: Confidential.

P 91–1459

Manufacturer. Confidential.

Chemical. (G) Hydrogenerated acrylonitrile-butadiene polymer.

Use/Production. (S) Heat and oil resistenant rubber for automobile seals. Prod. range: 5,000–50,000 kg/yr.

P 91–1460

Importer. Takeda U.S.A., Inc.

Chemical. (G) Acrylate copolymer.

Use/Import. (G) Modifier for plastics. Import range: Confidential.

P 91–1461

Importer. Takeda U.S.A., Inc.

Chemical. (G) Butadiene and acrylate copolymer.

Use/Import. (G) Modifier for plastics Import range: Confidential.

P 91–1462

Importer. Takeda U.S.A., Inc.

Chemical. (G) Acrylates copolymer.

Use/Import. (G) Modifier for plastics. Import range: Confidential.

P 91–1463

Manufacturer. Confidential.

Chemical. (G) Styrene-maleic anhydride copolymer, amine salt.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 91–1464

Manufacturer. Minnesota Mining Manufacturing (3M).

Chemical. (G) Substituted diacrylate.

Use/Production. (G) Monomer for polymeric coatings. Prod. range: Confidential.

P 91–1465

Manufacturer. Texaco Chemical Co.

Chemical. (S) Ehanamine, 2,2'-(1,2-ethanediylbis(oxy)bis(*N,N,*-dimethyl-.

Use/Production. (S) Polyurethane catalyst. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 1.2 g/kg species (rat). Acute

dermal toxicity: LD50 1.13 g/kg species (rabbit). Eye irritation: strong species (rabbit). Mutagenicity: negative. Skin irritation: strong species (rabbit). Skin sensitization: negative species (guinea pig).

P 92-1

Manufacturer. Henkel Corporation.

Chemical. (S) Fatty acids, C_{8-18} and C_{18} unsat., methyl esters, reaction products with *N,N*-dimethyl amino propyl amine.

Use/Production. (S) Imtermediate. Prod. range: 500,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 5.4 g/kg species (rat).

P 92-2

Manufacturer. Henkel Corporation.

Chemical. (S) 1-Propanaminum, 3-amino-*N*-(carboxy methyl)-*N,N*-dimethyl-, *N*-(C_{8-18} and C_{18} unsat.,) acyl, chlorides, inner salts.

Use/Production. (S) Component in hand soap formulation. Prod. range: 2,000,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5 ml/kg species (rat). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-3

Manufacturer. Basf Corporation.

Chemical. (G) (Amine phenyl substituted)ethenyl indolium salt.

Use/Production. (S) Textile dye. Prod. range: Confidential.

P 92-4

Manufacturer. Confidential.

Chemical. (G) Fluorinated alcohol phosphate ester.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92-5

Manufacturer. Confidential.

Chemical. (G) Fluorinated alcohol phosphate ester salt.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92-6

Manufacturer. Confidential.

Chemical. (G) Fluorinated alcohol phosphate ester.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92-7

Manufacturer. Confidential.

Chemical. (G) Fluorinated alcohol phosphate ester salt.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92-8

Manufacturer. Confidential.

Chemical. (G) Fluoroinated alcohol phosphate ester.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92-9

Manufacturer. Confidential.

Chemical. (G) Fluorinated alcohol phosphate ester salt.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92-10

Importer. Hi-Tech Color, Inc.

Chemical. (G) Aliphatic polyurethane.

Use/Import. (S) Vehicle of paints. Import range: 300–1,000 kg/yr.

P 92-11

Importer. Hi-Tech Color, Inc.

Chemical. (G) Alkylsilicone copolymerized aliphatic polyurethane.

Use/Import. (S) Vehicle of paints. Import range: 1,000–3,000 kg/yr.

P 92-12

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin polyester amide.

Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

P 92-13

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin polyester amide, ammonium salt.

Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 11.5 g/kg species (rat). Static acute toxicity: time LC50 48h28 ppm species (daphnia pulex). Skin irritation: slight species (rabbit).

P 92-14

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin polyester amide, momoethanolamine salt.

Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 11.5 g/kg species (rat). Static acute toxicity: time LC50 48h28 ppm species (daphnia pulex). Skin irritation: slight species (rabbit).

P 92-15

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin polyester amide, morpholine salt.

Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 11.5 g/kg species (rat). Static acute toxicity: time LC50 48h28 ppm species (daphnia pulex). Skin irritation: slight species (rabbit).

P 92-16

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin polyester amide, *N,N*-dimthylaminoethanol salt.

Use/Production. (S) Resinfor printing ink. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 11.5 g/kg species (rat). Static acute toxicity: time LC50 48h28 ppm species (daphnia pulex). Skin irritation: slight species (rabbit).

P 92-17

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin polyester amide, 2-amino-2-methyl-propanol salt.

Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 11.5 g/kg species (rat). Static acute toxicity: time LC50 48h28 ppm species (daphnia pulex). Skin irritation: slight species (rabbit).

P 92-18

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin polyester amide, 2-amine-2-methyl-prpoanol salt.

Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 11.5 g/kg species (rat). Static acute toxicity: time LC50 48h28 ppm species (daphnia pulex). Skin irritation: slight species (rabbit).

P 92-19

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin polyester amide, triethylamine salt.

Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 11.5 g/kg species (rat). Static acute toxicity: time LC50 48h28 ppm species (daphnia pulex). Skin irritation: slight species (rabbit).

P 92-20

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin polyester amide, *N,N*-diethylethanolamine salt.

Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 11.5 g/kg species (rat). Static acute toxicity: time LC50 48h28 ppm species (daphnia pulex). Skin irritation: slight species (rabbit).

P 92-21

Importer. Basf Corporation.

Chemical. (G) Sulfonated azo dye with monochlorotriazine groups, copper complex; potassium, sodium salt.

Use/Import. (S) Reactive dyestuff for textile. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >2,200 mg/kg species(rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit). Mutagenicity: negative. Skin irritation: negligible species (rabbit). Skin sensitization: negative species (guinea pig).

P 92-22

Importer. Confidential.

Chemical. (G) Substituted quaiacol.

Use/Import. (G) Component. Import range: Confidential.

P 92-23

Manufacturer. Confidential.

Chemical. (G) Amine functional epoxy resin.

Use/Production. (S) Coatings. Prod. range: Confidential.

P 92-24

Manufacturer. Confidential.

Chemical. (G) Amine functional epoxy resin salted with an orgsnic acid.

Use/Production. (S) Coatings. Prod. range: Confidential.

P 92-25

Manufacturer. Confidential.

Chemical. (G) Amine functional epoxy resin salted with an organic acid.

Use/Production. (S) Coatings. Prod. range: Confidential.

P 92-26

Manufacturer. Confidential.

Chemical. (G) 2-ethyl-2-hydroxymethyl-1,3-propanediol, ester with branched C9 fatty acids.

Use/Production. (G) Synthetic industrial lubricant. Prod. range: Confidential.

P 92-27

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Acrylic salt.

Use/Production. (G) Coating. Prod. range: Confidential.

P 92-28

Manufacturer. Confidential.

Chemical. (G) Phosphorothioic acid ester btranched amine salts.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 92-29

Manufacturer. Confidential.

Chemical. (G) Acrylic-acrylamine copolymer.

Use/Production. (G) Acrylic binder for decorative industrial coatings. Prod. range: Confidential.

P 92-30

Manufacturer. Confidential.

Chemical. (G) High solids air-solicone alkyd.

Use/Production. (S) Architectural air-dry coatings. Prod. range: Confidential.

P 92-37

Manufacturer. Confidential.

Chemical. (G) 2,2,4-Trimethyl-1,3-pentanediol; phthalic anhydride; alipic acid; trimethylolpropane.

Use/Production. (S) Polymer for enamel paint. Prod. range: 100,000–250,000 kg/yr.

P 92-38

Importer. UBE Industries (America), Inc.

Chemical. (G) Polymetallocarbosilane.

Use/Import. (G) Base material of paint. Import range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 48h > 250 mg/l. Eye irritation: none species (carp).

Dated: October 10, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-25043, Filed 10-16-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4022-1]

Wyoming's General Permits Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Wyoming.

SUMMARY: On September 24, 1991 the Regional Administrator for Region VIII of the Environmental Protection Agency (EPA) approved the State of Wyoming's National Pollutant Discharge Elimination System (NPDES) General Permits Program. This action authorized the State of Wyoming to issue general permits in lieu of individual NPDES permits. The approval was made under 40 CFR 123.62 which sets forth procedures for revision of a State's NPDES program.

FOR FURTHER INFORMATION CONTACT: Robert Shankland at (303) 293-1597, Compliance Branch (8WM-C), Water Management Division, Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202-2466.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Wyoming was authorized to administer the NPDES program on January 30, 1975. Their program, as previous approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For this reason, Wyoming has requested a revision of their NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include, but are not limited to: Storm water discharges, discharges of hydrostatic test water; discharges of well test water, construction site dewatering discharges; and recreational gold dredging discharges.

Each general permit will be subject to EPA review as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

Wyoming's general permits submission consists of an Attorney General's statement, a copy of the State statutes and regulations providing authority to carry out the program, a copy of the amended Memorandum of Agreement (MOA), and an amended program description. Based upon this information and Wyoming's experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

Under 40 CFR 123.62, NPDES program revisions are either substantial (requiring publication of proposed program approval in the **Federal Register** for public comment) or non-substantial (where approval may be granted by letter from EPA to the State). EPA has determined that assumption by Wyoming of general permit authority is a non-substantial revision of its NPDES program. EPA has generally viewed approval of such authority as non-substantial because it does not alter the substantive obligations of any discharger under the State program, but merely simplifies the procedures by which permits are issued to a number of point sources. Moreover, under the approved state program, the state retains authority to issue individual permits where appropriate, and any person may request the state to issue an individual permit to a discharger eligible for general permit coverage. While not required under § 123.62, EPA is publishing notice of this approval action to keep the public informed of the status of its general permit program approvals.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Wyoming's authority to issue general permits.

STATE NPDES PROGRAM STATUS

State	Approved State NPDES permit program	Approved to regulate federal facilities	Approved state pretreatment program	Approved state general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	.....	.....	03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	.....
Delaware	04/01/74	.....	.....	.....
Georgia	06/26/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	.....
Illinois	10/23/77	09/20/79	.....	01/04/84
Indiana	01/01/75	12/09/78	.....	04/03/91
Iowa	08/10/78	08/10/78	06/03/81	.....
Kansas	06/28/74	08/28/85	.....	.....
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	.....
Michigan	10/17/73	12/09/78	06/07/83	.....
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	.....
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	.....	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	.....	.....
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	.....	.....
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90	.....	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	.....
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	.....	08/02/91
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	.....
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	.....	03/16/82	.....
Virgin Islands	06/30/76	.....	.....	.....
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73	.....	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	.....	09/24/91
Total	39	34	27	25

Number of fully authorized NPDES Programs (Federal Facilities, Pretreatment, General Permits) = 17

IV. Review under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12291 pursuant to section 8(b) of that Order. Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a number of small entities.

Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this State General Permits Program will not have a significant impact on a substantial number of small entities. Approval of the Wyoming NPDES State General Permits Program merely provides a simplified administrative process.

Dated: October 9, 1991.

Jack McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 91-25027 Filed 10-16-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 91-199; DA 91-1210]

Private Land Mobile Radio Services; Houston Area Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Houston (Region 51). As a result of accepting the Plan for Region 51, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 25, 1991.

Released: October 7, 1991

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On April 11, 1991, Region 51 (Houston) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region.

2. The Houston plan was places on Public Notice for comments on June 28, 1991, 56 FR 31128 (July 9, 1991). The Commission received one comment from the City of Pasadena, Texas (Pasadena) and no reply comments.

3. Pasadena had two concerns. First, it was concerned that the appeal procedures established no time limits for action by the Regional Review Committee. Second, it stated that the plan does not state whether frequencies which have been applied for but remain unassigned due to denial and pending appeal are considered unassigned. In both instances, Pasadena admits that experience may prove both of these concerns to be unfounded.

4. We have reviewed the plan submitted for Region 51 and find that it conforms with the Nation Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Houston. We agree with Pasadena that the concerns it raised are unlikely to occur. If issues such as those raised by Pasadena to arise, they will be handled on a case-by-base basis.

5. Therefore, we accept the Houston Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in the Houston area may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 91-24915 Filed 10-16-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010012–021.

Title: Australia/Pacific Coast Rate Agreement.

Parties: Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft, Eggert & Amsinck (Columbus Line), Associated Container Transportation (Australia) Limited (Pace Line).

Synopsis: The proposed amendment would modify appendix D of the Agreement to provide indirect service to the discharge ports listed in the appendix at no extra cost to the shipper or exporter. The parties have requested shortened review.

Agreement No.: 202–010268–018.

Title: Australia/Eastern U.S.A. Shipping Conference.

Parties: Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft, Eggert & Amsinck (Columbus Line), Associated Container Transportation (Australia) Limited (Pace Line).

Synopsis: The proposed amendment would modify appendix B of the Agreement to provide indirect service to the discharge ports listed in the appendix at no extra cost to the shipper or exporter. The parties have requested shortened review.

Agreement No.: 203–011268–004.

Title: New Zealand/United States Interconference and Carriers Discussion Agreement.

Parties: New Zealand-Pacific Coast Rate Agreement, New Zealand/U.S. Atlantic & Gulf Shipping Lines Rate Agreement, Blue Star Pace Limited, Columbus Line, Australia-New Zealand Direct Line, ABC Container Line, N.V., Nedlloyd Lijnen, B.V. ("Nedlloyd").

Synopsis: The proposed amendment would delete Nedlloyd as a party to the Agreement.

Agreement No.: 224–200575.

Title: North Carolina State Ports Authority/Polish Ocean Lines Terminal Agreement.

Parties: North Carolina State Ports Authority ("SPA") Polish Ocean Lines ("POL").

Synopsis: The proposed Agreement would guarantee that POL would have access to berthing space and container cranes at the time of its weekly port calls at Wilmington, North Carolina. It would also provide that SPA will refund a portion of the port's tariff charges to POL for each port call at Wilmington. The Agreement would have an initial term of two years.

Agreement No.: 224–200577.

Title: Georgia Ports Authority/Hapag-Lloyd A.G. Terminal Agreement.

Parties: Georgia Ports Authority ("GPA"), Hapag-Lloyd A.G. ("Hapag-Lloyd").

Synopsis: The Agreement, filed October 7, 1991, provides for the leasing by Hapag-Lloyd of terminal facilities from GPA at Savannah, Georgia and establishes the level of charges for ship services and field services to be provided by GPA. This Agreement cancels Agreement No. 224–200262.

Agreement No.: 224–200578.

Title: Port of New Orleans/E.C. Colley Warehouse Corporation Terminal Agreement.

Parties: Port of New Orleans ("Port"), E.C. Colley Warehouse Corporation ("ECC").

Synopsis: The proposed Agreement would permit the Port to lease sections 18 through 27 of the Port's First Street Wharf to ECC for a two-year period.

Dated: October 10, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24946 Filed 10-16-91; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; Seafast, Inc.; Correction

By notice published in the **Federal Register** on Monday, July 8, 1991 (56 FR 30926) Seafast, Inc., was incorrectly listed as licensee number FMC No. 2900. The correct license number for Seafast should have been FMC No. 2990.

Dated: October 10, 1991.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing

[FR Doc. 91-24949 Filed 10-16-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-44]

Actions To Address Adverse Conditions Affecting United States Carriers in the United States/Taiwan Trade; Order of Investigation

Upon publication of this Notice and Order in the **Federal Register**, the Federal Maritime Commission ("Commission") initiates an investigation of shipping conditions in the United States/Taiwan Trade ("U.S./Taiwan Trade" or "Taiwan Trade") under the Foreign Shipping Practices Act of 1988 ("FSPA"), 46 U.S.C. app. 1710a. This investigation seeks to determine whether conditions exist in the Taiwan Trade which adversely affect the operations of United States carriers and which do not exist for Taiwan carriers in the United States ("U.S.").

Since 1987, the Commission has been examining whether laws, rules, regulations, policies or practices (collectively, "trade practices") of Taiwan authorities have impeded intermodal operations of U.S. carriers in Taiwan.

In 1989, the Commission instituted a proceeding under the then recently enacted FSPA to investigate certain restrictions imposed by Taiwan authorities and identified by U.S. carriers as hampering their intermodal operations in Taiwan (Docket No. 89-16).[1] The trade practices identified in Docket No. 89-16 related to U.S. carriers' authority to: (1) Operate off-dock container terminals; (2) provide inland trucking services; (3) register and use chassis in their own names; (4) lease empty containers; and (5) operate shipping agencies. Docket No. 89-16 was discontinued based on the Commission's findings that: (1) Commitments were made to resolve the issues; (2) progress towards that end was anticipated; and (3) neither the Commission's Bureau of Hearing Counsel nor any U.S. carrier requested the Commission to impose sanctions. In discontinuing Docket No. 89-16, the Commission announced that by separate order it would require named Taiwan carriers [2] and U.S. carriers [3] serving the trade to report by mid-1990 on the status of shipping conditions in the trade.[4] Accordingly, by Order served on December 26, 1989, the named carriers were directed to file, on or before June 30, 1990, a report on the status of the five issues identified above.

Based on the status reports filed by the carriers in June 1990, the Commission ordered the named U.S. and Taiwan carriers to provide additional and more detailed information on the issues identified above, with particular regard to any adverse effects suffered by U.S. carriers due to restrictive trade practices by Taiwan authorities.[5] The carriers responded to the Commission's Order as directed on April 30, 1991.

Based on a review of those responses, the following summarizes the Commission's understanding of the current status of restrictive practices by Taiwan authorities:

1. Operation of Off-Docket Container Terminals

U.S. carriers may operate off-dock container terminals in Taiwan either through branch offices or subsidiaries. However, either alternative is subject to land area restrictions. Carriers may seek special permission on a showing of special need to operate an off-dock container terminal on a minimum of 22,000 square meters (approximately 5.5 acres). Absent special permission, an off-dock container terminal must occupy at least 33,000 square meters.

Moreover, if operated by a branch office of a U.S. carrier, off-dock container terminals are subject not only to the land area minimums but also prohibitions against handling containers of another carrier (third-party containers). Alternatively, if a U.S. carrier opts to operate an off-dock container terminal through a subsidiary, it can do so only through a subsidiary in which it has a minority interest. In addition, at least two-thirds of the directors of such subsidiary must be Taiwan citizens.

It appears that these restrictions adversely affect U.S. carriers in that the inability of a branch office to handle third-party containers renders much of the minimum land area (whether 22,000 or 33,000 square meters) superfluous and prohibitively costly. Moreover, operating a facility through a subsidiary in which a U.S. carrier only has a minority interest would appear to compel the carrier to forgo essential operational and economic control over its investment. Effectively, these restrictions would seem to preclude U.S. carriers from operating off-dock container terminals in Taiwan. No comparable restrictions limit Taiwan carriers' ability to operate such facilities either in the United States or Taiwan.[6]

2. Providing Inland Trucking Services

Under Article 35 of the Taiwan Highway Law, U.S. carriers are prohibited from obtaining a license to provide trucking services in Taiwan. Although Taiwan authorities have given assurances that changes would be made to allow U.S. carriers to operate inland trucking in connection with their container services, no such action has been taken to date.

Trucking is an integral part of any modern intermodal transportation system. Therefore, the inability of U.S. carriers to conduct their own trucking operations in Taiwan appears to adversely affect those carriers. Because, apparently, there is no transportation alternative to inland trucking in Taiwan and the local trucking industry is a "cartel-like" structure, U.S. carriers tend to be locked into using particular trucking companies. Accordingly, it appears that U.S. carriers are deprived of the opportunity to maximize the efficiency of their intermodal operations with their own trucks and are unable to negotiate with local trucking companies. Moreover, because Taiwan carriers do not appear to be subject to any comparable constraints in either Taiwan or the U.S., they can be more efficient

[1] Docket No. 89-16, Actions to Address Adverse Conditions Affecting U.S. Carriers That Do Not Exist for Foreign Carriers in The U.S./Taiwan Trade, Notice and Order of Investigation, 25 S.R.R. 279 (July 21, 1989).

[2] Evergreen Marine Corporation ("Evergreen") and Yang Ming Marine Transport ("Yang Ming").

[3] American President Lines, Ltd. ("APL") and Sea-Land Service, Inc. ("Sea-Land").

[4] See, Docket No. 89-16, *supra*, Report and Order, 25 S.R.R. 599 (November 16, 1989).

[5] The Order requiring further information was issued on February 8, 1991 pursuant to the FSPA and section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876.

[6] The extent to which Taiwan carriers are subject to minimum land area requirements in Taiwan cannot be determined from information currently available.

than U.S. carriers and thereby obtain a direct competitive advantage.[7]

3. Chassis Registration and Use

Taiwan authorities will not permit chassis registration solely in the name of a U.S. carrier. The registration must also reflect the name of the authorized user of the chassis. Taiwan law does not permit a U.S. carrier to be an authorized user.

Taiwan carriers are not subject to comparable restrictions on their ownership and use of chassis in the United States.

The chassis registration issue is directly related to the inland trucking issue, discussed above, because a U.S. carrier's ability to maximize the benefits of operating its own trucks is dependent on its ability to use its own chassis. Moreover, restrictions on U.S. carriers' ability to register chassis in their own names as users of the chassis would appear to reinforce the inability of U.S. carriers to negotiate with Taiwan trucking companies. In turn, this may serve to keep U.S. carriers' costs high and to reduce the efficiency, economy and competitiveness of their operations.

4. Leasing Containers

No Taiwan laws or regulations prevent U.S. carriers from applying for authority to lease empty containers to others for carriage of cargo in Taiwan or from engaging in the business of leasing containers. One U.S. carrier reports that because of the structure of its operations in Taiwan, it has a substantial need to engage in container leasing to offset the high cost of repositioning empty containers. Consequently, in June 1990, that carrier filed an application for permission to operate container leasing business. Thereafter, the carrier advises that it encountered bureaucratic obstacles in the application process. To date, it appears that Taiwan authorities have taken no final action on the application and the carrier still lacks authority to lease its empty containers.

No comparable limitations on Taiwan carriers' ability to lease empty containers exist in the United States.

5. Operating Shipping Agencies

As with container leasing, there are no Taiwan laws or regulations that prevent U.S. carriers from applying for licenses to operate a shipping agency in Taiwan. However, a U.S. carrier applying for a shipping agency license in June 1990 was told by Taiwan authorities that carriers must have contracts with prospective customers prior to receiving a license. That requirement would appear to effectively negate the application process for U.S. carriers since it may not be possible for a U.S. carrier to obtain firm commitments from potential clientele prior to receiving authorization to conduct business.

The U.S. carrier reports that, to date, it has not received favorable action on its application. As a consequence, the carrier claims that it has lost opportunities to offset some of its fixed costs and overhead by earning revenues from other carriers serving Taiwan and may be denied collateral business opportunities that could further integrate its Taiwan shipping operations. No comparable limits on Taiwan carriers' ability to operate a shipping agency exist in the U.S.

Based on all of the foregoing, it appears that practices of Taiwan authorities result in the existence of conditions that adversely affect the operations of U.S. carriers in the U.S. oceanborne trade and that such conditions do not exist for Taiwan carriers in the United States.

Accordingly, the Commission institutes this investigation under the FSPA to determine whether U.S. carriers have been or will be adversely affected by the laws, practices and policies of Taiwan authorities described above,[8] whether remedial action is required, and, if so, what those remedies should be.

In particular, the Commission directs the parties to address the five major issues as more fully described above: (1) Operating off-dock container terminals; (2) providing inland trucking services; (3) registration and use of chassis; (4) leasing empty containers; and (5) operating shipping agencies. When facts are asserted, those facts should be set forth in detail in sworn affidavits of knowledgeable persons and should include any documentary evidence in support of such affidavits.

Proceedings under the FSPA are conducted within the framework of statutorily-imposed deadlines. Once initiated, the Commission must complete an investigation and render a decision within 120 days unless certain factors warrant a 90-day extension. Because of these time constraints, the proceeding will be limited to two rounds of simultaneous submissions by all parties. There will be an initial filing and a reply filing. Moreover, because of the time constraints, the proceeding will be conducted on the basis of written submissions only, without oral evidentiary hearings and without discovery. Any motions filed will not alter the deadlines established by the procedural schedule set forth below. In its discretion, the Commission may withhold ruling on such motions until a final order.

Any person seeking to participate as an intervenor must file affidavits of fact and memoranda of law in accordance with the procedures and schedule established below. Moreover, any person interested in participating as an intervenor must serve its filing on all parties and abide by all filing dates and procedures established herein.

Now Therefore, it is Ordered, That pursuant to section 10002(b) of the Foreign Shipping Practices Act of 1988, the Commission hereby initiates an investigation to determine whether any laws, rules, regulations, policies or practices of Taiwan authorities result in the existence of conditions that adversely affect U.S. carriers and do not exist for Taiwan carriers in the United States and, if such adverse conditions are found to exist, what shall be an appropriate remedy or remedies;

It is Further Ordered, That Evergreen Marine Corporation and Yangming Marine Transport are each named Taiwan carrier parties in this proceeding;

It is Further Ordered, That American President Lines, Ltd. and Sea-Land Service, Inc. are each named United States carrier parties in this proceeding;

It is Further Ordered, That the Commission's Bureau of Hearing Counsel is made a party to this proceeding;

It is Further Ordered, That any other person interested in participating in this proceeding may become an intervenor by filing an initial affidavit of fact or memorandum of law in accordance with the schedule and procedural requirements herein, including mailing a copy to all named parties;

It is Further Ordered, That following receipt of initial filings, the Commission's Secretary shall serve a list of all Intervenors and that, upon receipt of this list, all parties shall serve a copy of their initial filings on all Intervenors;

It is Further Ordered, That Intervenors shall participate in this proceeding in accordance with the filing and service schedule set forth below (late-filed pleadings or pleadings otherwise not filed in accordance with

[7] It appears that of the two Taiwan carriers, Yangming and Evergreen, at least one, Evergreen, operates a trucking company in Taiwan.

[8] U.S. Carriers reported to the Commission on two additional issues: (1) Use of tandem trailers on Taiwan highways; and (2) a dispute between Sea-Land and the Port of Kaohsiung over availability of gantry cranes and payment of a management fee. The Commission has determined not to investigate these issues at this time.

this Order will not be received into the record and will not be considered by the Commission);

It is Further Ordered, That the proceeding shall include oral argument in the discretion of the Commission;

It is Further Ordered, That this proceeding is limited to the submission of affidavits of fact and memoranda of law;

It is Further Ordered, That all submissions filed with the Commission by the two U.S. carrier parties and the two Taiwan carrier parties in response to Orders issued by the Commission on December 26, 1989, and February 8, 1991, pertaining to restrictive trade practices by Taiwan authorities in the U.S./Taiwan trades shall be made part of the record herein. If any party wishes a portion of a prior submission to be protected from public disclosure, that party shall file a motion by October 21, 1991, requesting such protection and shall identify the specific portions for which such protection is sought, and shall explain in detail why such protection is necessary;

It is Further Ordered, That this Notice and Order of Investigation be published in the **Federal Register**, and that a copy thereof be served upon the Taiwan carrier parties and the United States carrier parties;

It is Further Ordered, That this proceeding shall be conducted in accordance with the Commission's Rules in 46 CFR part 588 which requires, *inter alia,* that factual information that is submitted be certified under oath, and that all filings consist of an original and 15 copies.

It is Further Ordered, That the provisions of 46 CFR part 502, Subparts A, B and H shall also apply to this proceeding, except that the date of filing shall be the date of receipt, notwithstanding the provisions of 46 CFR 502.114(c).

It is Further Ordered, That all documents submitted by any party, including Intervenors in this proceeding, shall be filed in accordance with rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be mailed promptly to all parties of record;

It is Further Ordered, That all filing dates established by this Order shall be the dates documents are to be received by the Commission;

It is Further Ordered, That all initial affidavits of fact and memoranda of law shall be filed no later than November 15, 1991;

It is Further Ordered, That all reply affidavits of fact and memoranda of law shall be filed no later than December 16, 1991; and

Finally it is Ordered, That pursuant to the terms of the Foreign Shipping Practices Act of 1988 and the Commission's Rules in part 588, a decision by the Commission in this proceeding shall be issued by February 13, 1992.

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91-24976 Filed 10-16-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banque Nationale de Paris, Paris, France; Application to Provide Investment Advisory Services and Brokerage Services on a Combined Basis, Investment Advisory Services on a Separate Basis, and To Buy and Sell Securities On the Order of Investors as "Riskless Principal"

Banque Nationale de Paris, Paris, France ("BNP"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for prior approval to engage through its wholly-owned subsidiary, BAII Capital Markets, Inc., New York, New York, in providing investment advisory and securities brokerage services on a combined basis ("full-service brokerage"), providing investment advisory services separately, and acting as "riskless principal." The proposed activities will be performed on a worldwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously determined that engaging in full-service brokerage activities is closely related and a proper incident to banking. *See e.g., National Westminster Bank PLC,* 72 Federal Reserve Bulletin 584 (1986) ("*Natwest*"). BNP has committed to conduct these activities subject to the limitations in *Natwest,* as they were modified in *The Toronto Dominion Bank,* 76 Federal Reserve Bulletin 573 (1990), *Bankers Trust New York Corporation,* 74 Federal Reserve Bulletin 695 (1988)("*Bankers Trust*"), *Canadian Imperial Bank of Commerce, 74 Federal Reserve Bulletin 571 (1988), The Bank of Nova Scotia,* 74 Federal Reserve Bulletin 249 (1988), and *Manufacturers Hanover Corporation,* 73 Federal Reserve Bulletin 930 (1987).

The Board has previously determined that the proposed investment advisory services are closely related and a proper incident to banking. These activities are permissible nonbanking activities pursuant to subsections 225.25(b)(4)(iii) and (iv) of Regulation Y and will be conducted pursuant to the limitations of those subsections. (12 CFR 225.25(b)(4(iii) and (iv)).

In addition, BNP proposes to conduct "riskless principal" activities. The Board has approved the purchase and sale of all types of securities on the order of investors as "riskless principal" under certain limitations. *See, e.g., J.P. Morgan & Company Incorporated,* 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation,* 75 Federal Reserve Bulletin 829 (1989). BNP has proposed to conduct this activity within the limitations placed on these activities in previous Board decisions.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." 12 U.S.C. 1843(c)(8). BNP contends that permitting it to engage in the proposed activities would result in increased competition, greater convenience to customers, and increased efficiency in the provision of financial services. Moreover, BNP believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 14, 1991. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, October 10, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-24964 Filed 10-16-91; 8:45 am]

BILLING CODE 6210-01-F

Prairie Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 8, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Prairie Bancorp, Inc., Manlius, Illinois; to acquire 94.7 percent of the voting shares of Farmers State Bank of Ferris, Ferris, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. TCBankshares, Inc., North Little Rock, Arkansas; to acquire at least 98.95 percent of the voting shares of Twin City Bank, North Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, October 10, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-24965 Filed 10-16-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Toxic Substances and Disease Registry

[ATSDR-43]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, directs the Administrator of ATSDR to revise and republish each toxicological profile of priority hazardous substances (42 U.S.C. 9604(i)(3)). This notice announces the availability of 20 updated draft toxicological profiles prepared by ATSDR for review and comment. The original versions of these profiles were released for comment beginning in October 1987.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before February 8, 1992. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles should be sent to the attention of Susie Tucker, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta Georgia 30333.

Requests for the draft toxicological profiles must be in writing. Please specify the profiled hazardous substance(s) you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will not be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR-43. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. All written comments and draft profiles will be available for public inspection at the ATSDR, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333; Telephone: (404)-639-6000 or FTS 236-6000.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified the 250 hazardous substances which both Agencies determined pose the most significant potential threat to human health. The lists were published in the **Federal Register** on April 17, 1987 (52 FR 12866); October 20, 1988, (53 FR 141280); October 26, 1989 (54 FR 43615); and October 17, 1990 (55 FR 42067). CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.

Section 104(i)(3) of CERCLA outlines the content of these profiles. Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a program of research designed to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles are expected to be available to the public on or about October 17, 1991.

Document	Hazardous substance	CAS No.
1.	Aldrin	309-00-2
	Dieldrin	60-57-1
2.	Arsenic	7440-38-2
3.	Benzene	71-43-2
4.	Beryllium	7440-41-7
5.	Bis(2-ethylhexyl)phthalate	117-81-7
6.	Cadmium	7440-43-9
7.	Chloroform	67-66-3
8.	Chromium	7440-47-3
9.	Cyanide	57-12-5
10.	1,4-Dichlorobenzene	106-46-7
11.	Heptachlor	76-44-8
	Heptachlor Epoxide	1024-57-3
12.	Lead	7439-92-1
13.	Methylene Chloride	75-09-2
14.	Nickel	7440-02-0
15.	N-Nitrosodiphenylamine	86-30-6
16.	Polychlorinated Biphenyls	1336-36-3
	Aroclor 1260	11096-82-5
	Aroclor 1254	11097-69-1
	Aroclor 1248	12672-29-6
	Aroclor 1242	53469-21-9
	Aroclor 1232	11141-16-5
	Aroclor 1221	11104-28-2
	Aroclor 1016	12674-11-2
[1] 17.	2,3,7,8-tetracholorodibenzo - p-dioxin.	1746-01-6
	Chlorodibenzoidioxins	No CAS #
	Heptachlorobenzo- p-dioxin	37871-00-4
	Octachlorobenzo- p-dioxin	3268-87-9
18.	Tetrachloroethylene	127-18-4
19.	Trichloroethylene	79-01-6
20.	Vinyl Chloride	75-01-4

[1] The toxicological profile for 2,3,7,8-Tetrachlorodibenzo-p-dioxin, Chlorodibenzoidioxins, Heptachlorobenzo-p-dioxin, and Octachlorobenzo-p-dioxin will be available for public comment at a later date. The availability of this toxicological profile for public comment will be announced in the FEDERAL REGISTER when it becomes available.

All profiles issued as "Drafts for Public Comment" represent the agency's best efforts to provide important toxicological information on priority hazardous substances in compliance with the substantive and procedural requirements of section 104(i)(3) of CERCLA, as amended. As in the past, we are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our constituency.

Dated: October 9, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-24957 Filed 10-16-91; 8:45 am]

BILLING CODE 4160-70-M

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice of correction

SUMMARY: This notice corrects the inadvertent omission of a certified laboratory from the notice of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies published in the **Federal Register** on October 7, 1991, (56 FR 50586).

ElSohly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601-236-2609.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301)443-6014.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91-25147 Filed 10-15-91; 2:16 pm]

BILLING CODE 4160-20-M

Drug Use and Alcohol Abuse Prevention Demonstration Grants in the Community Partnership Study Program

OFFICE: Office for Substance Abuse Prevention.

ACTION: Request for applications.

This Request for Applications (RFA) solicits grant applications for projects to enable communities to implement and systematically study approaches to prevent and reduce alcohol and other drug abuse through the development of partnerships of multiple agencies and organizations at the local level. This approach represents a priority area in the President's Drug Strategy.

This RFA reflects a considerable shift in approach from the previous Office for Substance Abuse Prevention (OSAP) RFA concerning the Community Partnership Demonstration Program. The present RFA requires far more rigor in the conceptualization, design and implementation of projects and in their evaluation plans. Applications submitted under this RFA must present a five (5) year comprehensive alcohol and other drug abuse prevention plan for systems change at the community level through the design and implementation of well-defined community partnership models.

Introduction and Background

The Anti-Drug Abuse Act of 1988, section 2051, amended section 508(b)(10) of the Public Health Service Act (42 U.S.C. 290aa-6(b)(10), as amended) to authorize the Office for Substance Abuse Prevention to provide assistance to communities to develop comprehensive long-term strategies for the prevention of substance abuse and to evaluate the success of different community approaches for the prevention of substance abuse.

The literature indicates that uncoordinated, short-term and single-focused approaches to prevention have limited success and have not produced significant preventive effects in the community (Benard, 1987; Florin & Chavis, 1990; Hawkins & Catalano, 1989; Hopkins, Mauss, Kearney and Weisheit, 1988; Johnson, 1990; Pentz, 1986; Pentz, Cormack, Flay, Hansen & Johnson, 1986; Perry & Jessor, 1985; Schaps, Moskowitz, Malvin & Schaffer, 1986; Tobler, 1986). Additionally, the 1989 OSAP survey of community prevention programs in the U.S. indicates that comprehensive community-based prevention programs show a promising trend in the reduction of alcohol abuse and other drug use in communities (see The Future By Design: A Community Prevention System Framework, OSAP, 1990, which may be obtained from the National Clearinghouse on Alcohol and Drug Information, phone number 1-800-729-6686).

The Office for Substance Abuse Prevention considers it essential that multiple and key organizations and groups of the community be involved in the development and implementation of comprehensive programs to prevent drug use and alcohol abuse within the community. Therefore, this grant program has been initiated to help communities develop partnerships for the purpose of creating and implementing comprehensive prevention programs. This program is designed to improve, change and introduce innovations in the prevention approaches of the community by utilizing the existing resources and

potential of the community in an optimal manner.

At present, the Office for Substance Abuse Prevention is supporting the Community Partnership Demonstration Program. This program has provided funds to more than 200 communities for the purpose of developing effective partnership models in preventing alcohol and other drug abuse at the community level.

This RFA, entitled "The Community Partnership Study Program," reflects a shift in approach from the previous OSAP Community Partnership Demonstration Program. It is aimed at communities that have HIGH prevalence of alcohol abuse and other drug use, as evidenced by prevalence rates higher than the national averages. Furthermore, it requires more rigor in the conceptualization, design, implementation and evaluation of the partnerships and the prevention activities in order to be able to demonstrate the effectiveness of different partnership and prevention program models.

Applicants should be aware that the same application may not be submitted to more than one PHS component. For example, the same application may not be submitted to the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institute on Drug Abuse (NIDA), the Office for Treatment Improvement (OTI), or OSAP for the same programmatic activities.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This Request for Applications will help fulfill the objectives of the priority areas of Alcohol and Other Drugs, and Education and Community Based Programs [potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238)].

Goal of Program

The goal of the Community Partnership Study Program is to achieve and document measurable reductions in alcohol and other drug abuse incidence, prevalence, and related consequences such as alcohol and other drug related health problems, mental disorders and comorbidity, crimes, deaths and injuries among all age and ethnic groups within a community

This grant program is directed toward communities with high prevalence and incidence of alcohol and other drug abuse, with gaps in existing prevention activities, or with no substantial, comprehensive prevention programs. The grant program is intended to combat drug abuse through the systematic formation of partnerships of multiple organizations in communities, for the purpose of designing and implementing theoretically and pragmatically sound comprehensive prevention programs. These partnerships will promote systems change in communities and facilitate the development, implementation, maintenance and evaluation of long-range, comprehensive, multi-disciplinary and community-wide alcohol and other drug abuse prevention projects.

Letter of Intent

It is suggested that organizations planning to submit an application in response to this grant announcement submit a Letter of Intent thirty (30) days prior to the application receipt date. Such notification is used by OSAP for purposes of review and program planning. The Letter of Intent should be no longer than one type written page and should succinctly indicate:

- Request for Applications number (RFA SP92-01);
- Name of potential applicant organization and names of the partnership's member organizations;
- Name and telephone number of Project Director; and
- Name and population size of target and comparison communities.

The letter should be directed to: Director, Office of Program Coordination and Review, Office for Substance Abuse Prevention, ATTN: Community Parternship Study Program, 5600 Fishers Lane—Rockwall II, suite 630, Rockville, Maryland 20857, telephone: (301) 443-4783.

The Letter of Intent is voluntary and does not obligate or commit the applicant to submit an application for this program.

Eligibility Requirements

To be eligible for consideration the project application must adhere to the requirements detailed below.

In the interest of promoting collaboration, cooperation and coordination among member organizations of a partnership serving a target community, multiple applications from the same community are strongly discouraged. Current recipients of OSAP's Community Partnership Demonstration Grant are ineligible to apply for this program. In addition, OSAP strongly discourages communities from applying for this program if they are already receiving Federal or non-Federal support for another partnership prevention program. Such an application will be viewed as duplicative of the work already being performed in the community, will not be accepted, not will it be funded. Please note that recipients of support under the OSAP Community Partnership Demonstration Grant program are ineligible to apply for additional grant support under this RFA.

Only public or private, non-profit organizations are eligible applicants for this demonstration program, because these are the organizations that have historically been active in developing and implementing prevention programs in communities, and their primary interests are in serving the public. While "for profit" organizations may be grant applicants, they are encouraged to be members of the partnership.

A partnership must consist of both public and private sector organizations whose key leaders (or their designees) are willing to commit their support to the partnership by direct participation in the partnership formation and operation. The partnership must include at least seven local organizations or agencies. The chief elected official(s) of the local government(s), or their designee(s), must comprise one of the seven members of the partnership.

The member organizations must designate an Applicant Organization to be the lead agency of the partnership, in order to receive the grant award on their behalf. This designation must be documented through separate letters of designation (see "Partnership Plan," Section D) from each member organization of the partnership. Each letter should designate the applicant organization to act on behalf of the member and indicate the member's commitment to participate in the partnership. The application will be submitted by the Applicant Organization on behalf of the partnership.

The project should identify a Project Director (PD) who intends to work directly with the target community (preferably) representing one of the member organizations), and who must have prior experience and expertise in designing, implementing and evaluating prevention programs and partnerships at the community level. The person identified as the PD must be prepared to implement the project should it be funded by OSAP. However, the design of the project may or may not be prepared by the PD.

The application must identify and describe a comparison community for evaluation purposes. A letter written by the chief elected official of the comparison community agreeing to participate in the study must be included in Appendix 3 of the application (see "Comparison Community" Section H).

Application Characteristics

Applications must be complete and contain all information needed for review. Except where otherwise required by these instructions (e.g., comments from the State's Single Point of Contact), no supplementary or corrective material will be accepted after the receipt date unless specifically requested by or agreed to in prior discussion with the Review Administrator of the Initial Review Group. Because there is no guarantee that such late material will be considered, it is important that the application be complete at the time of submission.

For purposes of this FRA, alphabetical appendices refer to the documents appended to the RFA. Numerical appendices refer to the appendices that provide reference materials and are submitted with an application for the Community Partnership Study Program.

Letters of designation (see Eligibility Requirements) from each of the partnership member organizations must be included with the application in Appendix 1, entitled "Letters of Designation," at the time of submission. These letters will not be accepted if sent under a separate cover. Other letters of support should be limited in number to those that the applicant deems essential to the successful completion of the project and should be included in appendix 2, entitled "Other Letters of Support."

The sections (A–K) to be included in the narrative of the application are described below. The narrative should be written in a manner that is clear and self-explanatory to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized and succinct, and it should contain all information necessary for reviewers to understand the proposed project fully.

Sections A through J may not exceed 40 single-spaced pages (this is exclusive of the Table of Contents which should precede section A). Charts and diagrams will be included within the page limits. Applications exceeding these limits will not be accepted for review. No pages limits apply to section K, "Participant Protection: Confidentiality and Other Ethical Concerns."

Appropriately identified appendices may be attached to clarify technical materials. Attached materials may not be used merely to extend the narrative, and will not be reviewed if so determined.

The application should include a Table of Contents identifying Sections A–K and their page numbers as follows:

A. Abstract
B. Target Community
C. Project Goals and Objectives
D. Partnership Plan
E. Prevention Program Plan
F. Implementation Plan
G. Cultural Sensitivity and Diversity
H. Evaluation Plan
  Comparison Community
  Process Evaluation
  Outcome Evaluation
I. Resources/Budget
J. Project Staffing and Organization
K. Participant Protection: Confidentiality and Other Ethical Concerns
Appendix 1: Letters of Designation
Appendix 2: Other Letters of Support
Appendix 3: Letter of Agreement From the Comparison Community
Appendix 4: Partnership Documentation
Appendix 5: Other Project Support
Appendix 6: Organizational Structure
Appendix 7: Resumes/Job Descriptions

The following Sections A through K replace the general instructions for completing the narrative of the Application Form PHS 5161–1 (Rev. 3/89).

A. Abstract

The abstract should not exceed thirty (30) type written lines on a single page. It should clearly present the grant application in summary form, so that reviewers can see how the multiple parts of the application fit together to form a coherent whole. At a minimum the abstract should: (1) Identify the target and comparison communities and their dimensions and specification; (2) document the extent of the target and comparison communities' alcohol and drug problems and the need for prevention services in the target community; (3) indicate whether this is an ongoing partnership or one that has been formed for the purposes of this application; (4) identify the lead organization (applicant) for the partnership; (5) indicate the proposed model for developing a community partnership strategy for preventing alcohol and other drug abuse to be implemented and studied within the community; and (6) identify the basic evaluation model to be used in the study.

B. Target Community

For the purposes of the Community Partnership Study Program, a community is defined as the group of residents of a geographic area who may be loosely or closely associated, and who are served by the same group of service organizations. The boundaries of a community do not have to be congruous with those of an incorporated governmental entity such as a town, city or county. A community may be a subset of a larger incorporated governmental entity, or a combination of a few incorporated governmental entities, as long as it is served by the same service organizations. Target communities to be served and evaluated will be defined geographically. The partnership strategy will include all racial, ethnic and cultural groups that impact on the defined community.

This section of the application must describe the target community in terms of its population size, location, demographic and socioeconomic characteristics, ethnic composition and municipal entity or entities, and should include an assessment and description of services and significant gaps in the services that are directly or indirectly related to the prevention and intervention of the alcohol and other drug problems of the community. It should also include a brief description of the communities surrounding the target community, their proximity (in miles), and their social and other kinds of significant interchanges (directly or indirectly related to the alcohol and other drug problems) with the target community.

The application must clearly document the prevalence, incidence and associated problems of alcohol and other drug abuse in the target community. In this section, the applicant should include as much information as possible about: (1) The rates of alcohol and other drug abuse; (2) community-wide indicators of alcohol and other drug abuse rates measurable in terms of drug and alcohol related crime, safety and health problems; and (3) risk factors within the community (e.g., economic and social deprivation, low neighborhood attachment, community disorganization, community norms and laws that facilitate use and availability of alcohol and other drugs). These three categories of information may pertain to the total population of the target community and specific groups within the target community. This information may be based on recent (within last 5 years), valid and reliable archival data

(if available) or valid and reliable community surveys.

For the purposes of this program, a community will be determined to have significant alcohol and other drug abuse problems by documenting a minimum of ten alcohol and other drug abuse and related problems. At least five of the ten local alcohol and drug abuse rates must be equal to or more severe than the National rates. Applicants must select indicators focusing on illicit (e.g., cocaine) drug use within the community, and may include indicators of licit drug use (e.g., alcohol). A list of national incidence and prevalence rates, risk factors, and indicators of alcohol and drug related social welfare, perception, safety and health problems is provided in appendices A and B. This information has been taken from the Department of Health and Human Services Healthy People 2000 Report, and a list of community-wide indicators of alcohol and other drug abuse that has been developed for the evaluation of another program sponsored by OSAP.

C. Project Goals and Objectives

The application must specify goals that are congruent with the problems and identified risk factors of the community, as well as the goals of this grant program. Objectives should be stated in measurable terms. For example, an applicant may identify an age-adjusted rate of alcohol related deaths due to automobile accidents at 20 deaths per 10,000 for the target community. Since 20 deaths per 10,000 exceeds the National Indicator, the project may set the specific objective of reducing the rate of deaths to 8.5 per 10,000 (which is the Nationally targeted rate for year 2000).

If a community-specific problem is not mentioned in the Healthy People 2000 Report, and the participating community is eager to reduce that problem, then the proposal should indicate the degree of final targeted reduction in the problem, or the increments of the reduction that are intended.

D. Partnership Plan

OSAP requires communities participating in the "Community Partnership Study Program" to include seven or more community organizations in their partnerships. To ensure a viable core of agencies and organizations, OSAP strongly recommends the involvement of: health, human services, education, public housing, law enforcement, communication, business, recreation, media, labor, civic and religious institutions. Due to the importance of health, human services, education, law enforcement, and public housing in prevention, applications not including these organizations must describe in this section how they will be integrated into the partnership in year two.

Other groups interested in alcohol and other drug abuse may be included, such as grassroots, volunteer, cultural, family, parent, and youth organizations. This is not an exhaustive list, and other organizations may also be included. When possible effort should be expended to include and involve organizations that have a history of dealing with the prevention of alcohol and other drugs in the community (e.g., Headstart, programs to increase youth employability, and other OSAP grantees).

The partnership plan must include:

- The names, addresses and brief descriptions of member organizations, and the name(s) and address(es) of the organization's authorized representative(s);
- Letter of designation from each partnership member organization [signed by the official(s) authorized to bind the organization(s)] indicating: (1) A serious commitment to the partnership, (2) Willingness to actively participate in its development and operation, (3) Reasons for participation in the partnership, and (4) Authorization for the applicant organization to act on the behalf of the partnership [these letters should be included in Appendix 1 entitled "Letters of Designation" (they will not be counted toward the page limit)];
- Evidence that the partnership has already been formed, including the documentation of two or more organizational meetings (i.e., meeting dates, attending partners and organization/group names) [this information should be included under appendix 4 of the application, entitled "Partnership Documentation"].

If an existing partnership is interested in applying, it must provide the above information, and be able to demonstrate that it is functional by documenting:

- Previously established goals and objectives;
- Success in attaining the previously held goals and objectives; and
- Any steps that must be taken to incorporate the goals, objectives and activities of the previous project into the present project.

The partnership plan should demonstrate familiarity with effective partnership formation and operation methods. This can be demonstrated by indicating:

- How the partnership is representative of the community at large in terms of cultural diversity (see "Cultural Sensitivity and Diversity," Section G);
- How leaders within the community have been or will be included;
- What each member organization's possible contributions will be to the implementation and maintenance of a comprehensive prevention project;
- Specific ways to ensure effective communication among the partner organizations and groups;
- How all members will be included in the planning and implementation of the prevention project;
- Methods for conflict resolution among the partnership's organizations and groups;
- How cooperation, collaboration and credibility will be developed and maintained within the partnership;
- Ways of providing training and technical assistance for members of the partnership.

E. Prevention Program Plan

This section of the application must provide a detailed prevention plan for all five years of the program. Future modifications of the five year plan may be approved by OSAP to respond to the dynamic nature of the community, and to give the partnership the flexibility to address the community's changing needs.

The prevention program must have as a goal the reduction of the incidence and prevalence of identified alcohol and other drug problems in the target community. The prevention program objectives and planned activities should be based on a conceptual framework that is theory based and congruent with the latest research findings. The goals, objectives and activities must be defined and articulated clearly. All objectives and activities must be appropriate for the makeup and cultural diversity of the target groups within the community.

The majority of Federally provided funds under this grant program are intended to identify gaps in the prevention services in the community, improve and augment existing prevention programs, and avoid duplication of existing effective program components. Special emphasis should be given to promoting the efficiency of the services delivery systems, efficiency and staffing, adequacy of staff training and specialization, dissemination of information pertaining to available prevention resources, and changes in public policy pertaining to alcohol and other drug availability, use, sale and enforcement of laws. Additionally, the prevention plan must describe:

- How the program will involve and serve the entire community and cultural groups within it;
- How the partnership will develop and maintain within the community a sense of trust and credibility;
- How the public will be kept informed of the project goals, objectives, activities, successes and failures;
- How identified risk factors will be reduced;
- How protective factors will be increased;
- How the partnership can ensure ongoing responsiveness to community needs and interests.

The majority of the Federally provided funds are not to be targeted at direct prevention services. The following are examples of activities to improve the prevention system that are not considered direct prevention services;

- Recruitment and training of parents, other adults and youth or peers for grassroots leadership roles in substance abuse prevention;
- Community development and empowerment of local citizens through intensive consultation, addiction, education, and strategic planning;
- Partnership staff support for community activities or citizen-sponsored advocacy and action planning for substance abuse prevention (including team-building and training workshops and maintenance and support between agencies and the community);
- Organizational development to improve systems aimed at substance abuse prevention (i.e., a means for achieving systems change within a community);
- Mechanisms to plan, assess and coordinate planned and/or existing activities that are related to alcohol and other drug abuse prevention within the community;
- Training or trainers necessary for achieving greater capacity and efficiency in the community.

When the applicant deems prevention services necessary, and local resources to support such direct services scarce, the project will be permitted limited funds for direct prevention services. Specifically, funds for direct services will be limited to 10% in year one, 30% in each of years two and three, and 10% in each of years four and five. This grant program encourages the development of needed resources for prevention services from other sources available within the community.

F. Implementation Plan

This section of the application should discuss how the community-wide prevention effort was or will be initiated and implemented. It must describe an overall plan for the implementation of the program, including timeliness and a sequence of the planned activities. The plan must also propose options for interfacing with the appropriate State's overall prevention plan and describe how the Partnership will coordinate with groups providing treatment services within the community.

The Implementation Plan must provide a strategy for disseminating knowledge and products resulting from the project to community organizations and agencies, as well as obtaining similar information from such communities, organizations and agencies.

While cost-sharing is not a requirement of the program, OSAP encourages partnership programs to become self-sufficient after the expiration of this five year Federal funding. Therefore this section of the application must describe an approach for continued support for the project after Federal funding has ended (e.g., State or local revenue, support from the business community and Foundations, Federal block grant funds, client fees or other fund raising activities).

G. Cultural Sensitivity and Diversity

The applicant must address issues of cultural sensitivity and diversity within the community, as well as ensure that these issues will be an integral component within the partnership. All applications must present a strategy for responding to issues of cultural sensitivity and diversity within the community by addressing the following issues:

Cultural Groups: The application must describe all cultural groups that impact on the target community regardless of size. It must include information about national origin, socioeconomic status, religious affiliation, group-specific risk factors, drug prevalence and incidence measures.

Cultural Diversity and Sensitivity: The partnership and the prevention program should be designed and implemented in such a way that: (a) All cultural groups that impact on the community are represented in the partnership; (b) the prevention program components are consistent with the cultural norms of the cultural groups of the community; and (c) the total prevention program addresses the needs of all segments of the community.

H. Evaluation Plan

OSAP will not support projects which do not have well-developed and comprehensive evaluation plans. The evaluation plan must be conceptually and procedurally integrated with the overall study program. It must bear directly upon the verification of the connection between implementation and outcomes. A timeline for conducting all evaluation procedures must be specified. The evaluation plan must describe the selection and development of psychometrically sound measures and instruments for data collection. Additionally, the evaluation plan must be designed by a professional who is highly experienced in comparative evaluation methodology, and willing to work closely with the project.

Reviewers will be directed to give extra weight to the evaluation criteria as outlined in this section.

The evaluation section of the application must include detailed and clearly articulated descriptions of: (1) A separate community for comparison purposes; (2) process evaluation; and (3) outcome evaluation.

Comparison Community. National trends suggest that drug use is decreasing. Without a comparison community one cannot rule out the possibility that an observed change in the target community's drug use might have occurred without the prevention program. An appropriate comparison community, where the planned prevention or a similar prevention program is not implemented, will allow for stronger conclusions about program effects, by reducing the plausibility of alternative explanations of change, such as historical or time effects.

In this section of the application, the applicant must identify and describe another community for comparison purposes. It is important that the comparison and target communities be as similar as possible at baseline, because the greater the similarity between the target and comparison communities, the greater the likelihood of detecting and explaining effects of the partnership prevention program on the target community. However, the comparison community cannot have an OSAP funded community partnership program for comprehensive drug abuse prevention.

The more variables that are used to match communities, the more similar the communities will be. For this drug prevention study it is recommended that the target and comparison communities be matched in size, demographic characteristics (e.g., ethnic composition, age distribution, socio-economic status, urbanicity), characteristics of community structure (e.g., number and type of community and social service organizations), and most importantly

incidence and prevalence of drug use and related problems.

The significance of the incidence, prevalence and associated problems of alcohol and other drug abuse in the comparison community must be established in the same way it is established in the target community (see "Target Community" section B). To demonstrate drug abuse similarity between the target and comparison communities, at least three of the ten identified alcohol and drug related problems in the target and comparison communities must match.

The quality of matching depends on the quality of information on which the matching is based. Use of recent (within the last five years), reliable and valid archival data from the target and comparison communities for matching purposes will be acceptable. However, surveys of the target and comparison communities often produce more accurate information.

The target and comparison communities must be geographically distant enough to prevent the transmission of program activities from the target community to the comparison community.

Prior to the submission of this application, the chief elected official of the comparison community must be informed of the plan of the study. S/he must be informed about the procedures involving the collection of baseline and yearly information (pertaining to the alcohol and other drug abuse rates and indicators) from the comparison community. The comparison community must also be informed that participation in this study does not preclude it from initiating or participating in other Federal or non-Federal alcohol and other drug abuse prevention programs during the period of this grant.

The comparison community must consent to participate in this study. Therefore, written consent must be given by the chief elected official of the comparison community and included in the application under Appendix 3 (see Appendix C of this RFA for sample letter of agreement).

Process Evaluation. Process evaluation facilities the replication of the project if the project proves to be effective. It consists of the periodic monitoring of the implementation of the program during the course of the study of assure adherence to protocol, and to document what actually was being done. It involves the collection of quantitative and qualitative data that permits a description of the formation and ongoing functions of the partnership as well as the prevention project and its activities in the target community.

Process evaluation may include a description of the pattern of interaction of the organizations and citizen groups in the partnership; partners of coordination, cooperation and collaboration within the partnership; level of communication and conflict, as well as the resolution of conflicts within the partnership; staffing patterns; extent of formal and informal linkages and leadership patterns within the partnership; and chronology of development of these linkages.

Process evaluation may also describe the activities of the project in detail; the patterns of information and involving the community in the prevention activities; and the patterns for developing and sustaining trust and credibility for the program.

The process evaluation must include a description of the existing major and minor prevention programs in the comparison community at the start of this study. It should also provide yearly updates pertaining to the initiation of new prevention programs in the comparison community.

Outcome Evaluation. Outcome evaluation consists of assessing whether the project was effective in meeting its goals and objectives. The design of the outcome evaluation and the resulting data should be based on measurable goals and objectives of the individual project. Outcome evaluation design should be rigorous enough to result in valid conclusions concerning the effectiveness and replicability of the program.

Baseline data pertaining to the target and comparison communities are essential for a meaningful outcome evaluation. Measures of alcohol and other drug abuse and related problems which are used to establish the significance of alcohol and other drug problems, as well as data on all the remaining indicators listed in appendix B will comprise the required baseline data. In this section of the application such baseline data for the target and comparison communities must be provided. Additionally, plans for yearly collection of the same information from both communities must be described. Descriptions of all existing services in both communities, as well as their organizational structures must be provided at baseline and at each yearly interval. Finally this section of the application should present the plan of comparison between the target and comparison and communities for the duration of the project.

Projects funded under this grant program must participate in a national evaluation, by contributing data that are comparable across sites. A detailed description of the national evaluation plan and the nature of the necessary data for the national evaluation will be communicated to the funded study sites during the course of this study.

In addition, the evaluation section of the application must include a plan for cost benefit and cost effectiveness analyses. Cost benefit analysis compares the monetary value of the measurable benefits of a program with the monetary value of its costs. An example is the amount of cost savings in treatment due to the prevention of alcohol or other drug abuse. Cost effectiveness analysis, on the other hand, is used when outcomes are difficult to express in market values, and measurable effectiveness indicators must be used instead. Many times indicators are psychological, attitudinal, behavioral and physical measures of effectiveness. An example is the improvement in the academic performance of students as a result of a prevention program, where academic performance is used as a measure of the effectiveness of prevention.

I. Resources/Budget

Describe the facilities, equipment, services, and other resources available to carry out the project and specify their source (e.g. agency, organization, individual). Indicate the terms, conditions, and timetables regarding the availability of these resources. Describe and justify the resources requested, including personnel and travel.

Funds requested must be described and justified by budget line item. If consultant costs are requested, they should be separately identified in the "Other" budget category.

The budget should reflect the following guidelines:

- Sufficient travel allocation for two (2) evaluation staff to attend periodic meetings (two per year) in the Washington, DC area as required for participation in the national level evaluation process. Three days and two nights should be allocated for these meetings.
- Sufficient travel allocation for the project director and one staff person to attend two (2) meetings in each budget year in the Washington, DC. area as required by OSAP. These meetings will be for three days and two nights.
- No more than designated percentage (10%, 30%, 30%, 10%, and 10% in years one through five, respectively) of the grant award shall be dedicated to direct services (see Prevention Program Plan, Section E).
- It is expected that the prevention program plan will be developed in the

first year of the program. Expenditures for planning after year one will be limited to any necessary revisions of the five year partnership plan.

• A program evaluation budget up to, but not exceeding, 30% of the total direct costs of the OSAP allotted budget.

Other Support

"Other Support" refers to all current or pending support related to this application. Applicant organizations are reminded of the necessity to provide full and reliable information regarding "other support," i.e., all Federal and non-Federal active or pending support. Applicants should be cognizant that serious consequences could result if failure to provide complete and accurate information is construed as misleading to PHS and could, therefore, lead to delay in the processing of the application. In signing the face page of the application, the authorized representative of the applicant organization certifies that the application information is accurate and complete.

List all other sources of funding, both current and pending, of the applicant organization and other key organizations that will collaborate with the applicant organization on this proposed project. If there are no other funding sources, state "none."

For all active and pending support listed, also provide the following information:

(1) Source of support (including identifying number and title).

(2) Dates of entire project period.

(3) Annual direct costs supported/requested.

(4) Brief description of the project.

(5) Whether project overlaps, duplicates, or is being supplemented by the present application; delineate and justify the nature and extent of any programmatic and/or budgetary overlaps.

This information must be provided in a specially labeled in appendix 5, "Other Project Support."

J. Project Staffing and Organization

The following items should be included in the narrative of this section:

• A description of the organizational structure of the proposed project and an organizational chart (included in Appendix 6, entitled "Organizational Structure") showing the organizations which make up the partnership;

• A description of organizational relationships between the State and local level agencies and groups as they relate to the proposed project and the organizational units, such as sub-community units or task forces implementing the project;

• A staffing pattern that designates key staff of the partnership (i.e., PD, evaluation staff and others) and includes work experience and/or training pertinent to the project and resumes (includes in Appendix 7);

• A brief description of how staff was or will be recruited and selected, and whether any particular mix of background, skills, race/ethnicity, culture and/or personal qualities of staff is proposed.

Job descriptions for each key professional position identified in the proposed budget must be submitted in appendix 7. Job descriptions should include job title, description of duties and responsibilities, qualifications for the position (e.g., required skills, knowledge, experience, education or training), and supervisory relationships. Information requested by the RFA which must be included in Appendices will not be counted toward the page limit.

K. Participant Protection: Confidentiality and Other Ethical Concerns

Applicants and awardees are expected to make appropriate plans and take necessary steps to deal with potential ethical issues concerning participants in proposed projects. This section of the application should discuss ethical concerns such as confidentiality, privacy and voluntary participation, as well as describe plans to address these issues. Section K will not be counted toward the total page limit of the application.

A major area of concern is confidentiality. Grantees must agree to maintain the confidentiality of alcohol and drug abuse client data in accordance with the Code of Federal Regulations, 42 CFR part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

In those projects where individually identifiable, private information will be collected to achieve project objectives and/or carry out the proposed evaluation, the application must clearly identify and describe the population(s) for which such information will be collected, including their age(s), sex, ethnicity, and health status. In addition, this section of the application must include a description of (1) the sources and types of data that are to be obtained and maintained in identifiable form, and (2) the procedures that will be implemented to ensure the privacy and confidentiality of these records (e.g., using code numbers instead of individual participants' names on records, limiting access to records, maintaining security for records). Applicants should consider minimizing the time that identifiers are kept, consistent with the project's objectives.

Applicants must also discuss how they are planning to deal with other potential concerns about ethical issues. This section of the application should (1) identify any potential physical (including medical), psychological, legal, social (e.g., labeling), or other risks that participation in the project might present; (2) discuss what steps will be implemented to eliminate or minimize these risks; (3) discuss what procedures will be followed in obtaining assent or consent from participants and, if relevant, parental consent; and (4) specify what information will be provided regarding the nature, purpose, requirements, and potential risk of their participation.

Awardees may be required to obtain written informed consent from participants and/or their parents or legal guardians if participation in the project poses potential physical (including medical), psychological, legal, social (e.g., labeling), of other risks. This section of the application should indicate whether it is planned to obtain informed consent from participants and/or their parents or legal guardians and should describe the procedures to be followed in obtaining such consent, including the circumstances under which agreement to participate will be sought and the information that will be provided regarding the voluntary nature of participation, the right of participants to withdraw from the project without prejudice, and procedures for assuring confidentiality and minimizing potential risks. Copies of sample consent forms should be included in a separately labeled appendix.

Application Receipt and Review Schedule

Receipt Date	January 20, 1992.
Initial Review Date	May 1992.
Advisory Committee	September 1992.
Earliest Start Date	September 1992.

Consequences of Late Submission

Applications received after the January 20, 1992 receipt date will be returned to the applicant without review.

Application Procedures

Applicants must use form PHS 5161–1 (Rev. 3/89). The title of this RFA, Community Partnership Study Program

(SP92-01) should be typed in item 10 on the face page of the form.

Application Kits containing the necessary forms and instructions may be obtained from: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 20852, Phone (301) 468-2600, or 1-800-729-6686.

Each application packet must include one (1) original application signed by the authorized official of the applicant organization and two (2) copies. The application materials should be printed in black type on 8½"×11" white paper, with conventional border margins. Type density should not be greater than 15 characters per inch. The copies must be unbound with no staples, paper clips, fasteners, or heavy or lightweight paper stock within the document itself. The application will be reproduced in order to provide sufficient copies for review. Do not include anything that cannot be photocopied using automatic processors. Do not attach or include anything stapled, folded, pasted, or in a size other than 8½"×11" on white paper. Heavy or light-weight paper will clog the photocopy machine and could be destroyed by the machine. Only one side should have printing. Odd attachments of any kind will not be copied.

Application materials could accidentally get out of order when being reproduced, thus every sheet of the application must have a page number and the Project Director's last name. Pages must be numbered consecutively from BEGINNING TO END (for example, page 1 for the face page—SF-424, page 2 for the Abstract, etc.). The appendices should be labeled and separated from the narrative and budget section, and the page numbers continued in the sequence. Appendix material may not be used to extend the narrative portions of the applications. Do not include excessive material or over-sized material, e.g., brochures or posters. Do not send video tapes or similar exhibits as part of the appendices. Such materials will not be made available to the review committee.

The signed original and two (2) permanent legible copies of the completed application with appendices should be sent to: OSAP Programs, Division of Research Grants, NIH, Room 240—Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland 20892 (if express or overnight carrier issued, the Zip Code is 20816).

Contacts for Additional Information

Further information and consultation on program requirements can be obtained from: Director, Division of Community Prevention and Training or Chief, Community Prevention and Demonstration Branch, Division of Community Prevention and Training, Office for Substance Abuse Prevention, 5600 Fishers Lane, Rockwell II, Rockville, Maryland 20857, Phone (301) 443-9438.

Further information concerning grants management issues may be obtained from: Grants Management Officer, Grants Management Unit, Office for Substance Abuse Prevention, 5600 Fishers Lane, Rockwall II, Rockville, Maryland 20857, Phone (301) 443-3958.

Intergovernmental Review

The intergovernmental review requirements of Executive Order 12373, as implemented through DHHS regulations at 45 CFR part 100, are applicable to this program. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application kit. The SPOC should send any State process recommendations to: Director, Office of Program Coordination and Review, Office for Substance Abuse Prevention, 5600 Fishers Lane, Rockwall II—Suite 630, Rockville, Maryland 20857, Phone (301) 443-4783.

The due date for State process recommendations is 60 days after the deadline date for receipt of applications. The Office for Substance Abuse Prevention/Division of Community Prevention and Training does not guarantee to accommodate or explain State process recommendations that are received after the 60-day cut-off date.

Single State Agency Coordination

The application must include a copy of a letter sent to the alcohol and other drug abuse "Single State Agency" (SSA) briefly describing the grant application. It is strongly recommended that grantees coordinate with SSA personnel to ensure communication, reduce duplication and facilitate continuity. If the target community falls within the jurisdiction of more than one State, all representative SSAs should be involved. A list of SSAs can be found in the grant application kit.

Review Process

Applications submitted in response to this Request for Applications will be reviewed for technical merit in accordance with established PHS/ADAMHA objective review procedures for grants. The Division of Research Grants, NIH, serves as a central point for the receipt of applications. Applications will be screened for completeness and compliance with instructions for submission. An application will not be accepted for review and will be returned to the applicant if:

- It is received after the Receipt Date;
- It is incomplete;
- It exceeds the specified page limits;
- It is illegible;
- It does not conform to instructions for format;
- It does not have at least seven partners of the specified variety and/or each of them has not provided the appropriate letter of designation as specified in this RFA; or
- The material presented is insufficient to permit an adequate review.

Returned applications may not be resubmitted for the single receipt date of this RFA.

Applications that are accepted for review will be assigned to an Initial Review Group (IRG). The IRG, composed primarily of non-Federal experts, will review applications for technical merit. Notification of the IRG's recommendation will be sent to the applicant after the initial review. In addition, applications will receive a second-level review by the National Advisory Committee on Substance Abuse Prevention, whose review may be based on policy considerations as well as technical merit. Only applications recommended for approval by the Committee may be considered for funding.

Those applications that are approved by OSAP's Initial Review Groups, and are within the range of applications likely to be funded, may receive a pre-award site visit from OSAP program staff.

Review Criteria

Each grant proposal will be reviewed and evaluated on its own merit. The following criteria will be used in the review:

- Adequacy of documentation of need based on alcohol and other drug abuse problems within the community;
- Comprehensiveness, feasibility, and consistency of proposed prevention plan with the measurable goals of the RFA.

and the extent to which the application demonstrates an understanding of alcohol and other drug prevention as well as partnership development;

• Adequacy of the partnership plan and the commitment of public and private sector organizations in the partnership, including that of the local government(s) having jurisdiction in the target community;

• Adequacy and soundness of the staffing and project management plans, including evidence of the capability, experience and qualifications of the Project Director, consultants, and other key staff to implement the project successfully;

• Appropriateness of the implementation plan and the extent to which it demonstrates sensitivity to cultural, ethnic and socioeconomic factors in the community, including evidence that these factors are significant targets of inclusion in the partnership;

• Evidence of linkages of the project to existing relevant State and local prevention plans and activities in the target community, as well as a strategy for improving existing prevention plans and stimulating the delivery of new ones;

• Adequacy, appropriateness, feasibility and comprehensiveness of the evaluation plan, including sufficient allocation of resources; (Reviewers will be directed to give extra weight to the Evaluation Criteria, as outlined in Section H of this RFA.)

• Feasibility of project within the resources and timeframes proposed; appropriateness of the proposed budget; and inclusion of specific written commitments or documented working agreements from cooperating agencies, including agencies that may be providing services and/or the setting for these services;

• Appropriateness of direct service activities, if requested, that will be performed during project period, how such services will be integrated into the activities of the partnership, and how they will benefit the community in preventing alcohol and other drug abuse.

Award Criteria

Applications recommended for approval by the National Advisory Committee on Substance Abuse Prevention will be considered for funding on the basis of:

• Overall technical merit of the project as determined by the initial review process;

• Potential of the proposed project in developing a replicable approach;

• Programmatic balance among types of intervention strategies;

• Representation and balance of members within the partnership;

• Significance of alcohol and drug abuse problems as indicated by identification of a minimum of five indicators from *Healthy People 2000*;

• Adequate coverage of sociodemographic and geographical distribution;

• Availability of funds; and

• Evidence of support for the proposed project from the Single State Agency (SSA) for Drug and/or Alcohol Abuse.

Availability of Funds

In FY 1992 it is estimated that approximately $10,000,000 will be available to support approximately 10 to 15 grants awarded under this RFA. OSAP anticipated that the average amount of an award will vary, but will generally range from $500,000 to $1,000,000 per year for five years.

Terms and Conditions of Support

Grants must be administered in accordance with the PHS Grants Policy Statement (Rev. October 1, 1990).

Progress reports will be required and specified to awardees in accord with PHS Grants Policy requirements.

Grant funds may be used for expenses clearly related and necessary to carry out the services and activities, including both direct costs which can be specifically identified with the project and allowable indirect costs attributable to the lead organization responsible for the project. In order for service or contract organizations to recover those allowable costs with a project, it may be necessary to negotiate and establish an indirect cost rate. The grantee is responsible for assuring that service providers or contractors have taken steps to establish an indirect cost rate in accordance with State or Federal regulations.

Allowable items of expenditure for which grant support may be requested include:

• Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities at the partnership management level;

• Travel directly related to carrying out activities under the approved project;

• Supplies, communications, and rental of space directly related to approved project activities at the service or contract level;

• Contracts for performance of activities under the approved project;

• Evaluation costs in target and comparison communities, including all data collection, analysis and evaluation, development/consultation; and

• Other items necessary to support project activities such as those described in the Purpose and Program Goals section.

Federal regulations at Title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to the awards. Special conditions may be applicable in accordance with PHS Grants Policy Statement.

Period of Support

Support shall be requested for a period of 5 years, non-renewable. Annual awards will be made subject to continued availability of funds and progress achieved.

Reference

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Florin, P. and Chavis, D.M. Community development and substance abuse prevention. In: National Training System Trainer Resource Manual, Officer For Substance Abuse Prevention, 1990.

Hawkins, J.D. and Catalano, R.F. Risk and protective factors for alcohol and other drug problems in adolescence and early adulthood: Implications for substance abuse prevention. Presented at the First Symposium on the Prevention of Alcohol and Other Drug Problems, Rutgers University, 1989.

Hopkins, R.H.; Mauss, A.L.; Kearney, K.A.; and Weisheit, R.A. Comprehensive evaluation of a model alcohol education curriculum. Journal of Studies on Alcohol 49(1):38–50, 1988.

Johnson, C.O.; Pentz, M.; Weber, M.; Dwyer, J.; Buer, N.; McKinnon, D.; and Hansen, W. Relative effectiveness of comprehensive community programs for drug abuse prevention with hi-rish and low-risk adolescents. Journal of Consulting and Clinical Psychology, 58:447–456, 1990.

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Pentz, M.A.; Cormack, C.; Flay, B.; Hansen, W.B.; and Johnson, C.A. Balancing program and research integrity in community drug abuse prevention: Project Star Approach. Journal of School Health 56(9):389–393, 1986.

Perry, C., and Jessor, R. The concept of health promotion and the prevention of adolescent drug abuse. Health Education Quarterly 12(2):169–184, 1985.

Schaps, E., Moskowitz, J.M., Malvin, J.H. & Schaeffer, G.H. Evaluation of seven school-based prevention programs: A final report on the Napa Project. The International Journal of Addictions, 21:1081–1112, 1986.

Tobler, N.S. Meta-analysis of 143 adolescent drug prevention programs: Quantitative outcome results of program participants

compared to a control or comparison group. Journal of Drug Issues, 16, 537–567, 1986.

Appendix A—Healthy People 2000 Indicators

The Department of Health and Human Service's Healthy People 2000 Report contains a set of measurable objectives that are based on baseline statistics nation-wide. These baseline measures related to the use and abuse of alcohol and other drugs and related problems have been listed below. Applicants must select indicators focusing on illicit (e.g., cocaine) drug use within the community, and may include indicators of licit drug use (e.g., alcohol).

To establish the significance of the alcohol and other drug abuse problem in the target and comparison communities, at least 5 of the 10 highlighted problem measures in each community must correspond with the baseline statistics given in Healthy People 2000, as defined below.

All of the listed indicator baseline measures are recent. For purposes of this RFA, the listed indicators are of equal importance.

(1) The age-adjusted national average for deaths caused by alcohol-related motor vehicle crashes is 9.8 deaths per 100,000 people.

(2) The age-adjusted national average for deaths caused by alcohol-related motor vehicle crashes among American Indian/Alaskan Native men is 55.2 per 100,000.

(3) The national average for deaths caused by alcohol-related motor vehicle crashes among 15–25 year olds is 21.5 per 100,000.

(4) The age-adjusted national average for cirrhosis deaths is 9.1 per 100,000.

(5) The age-adjusted national average for cirrhosis deaths among Black men is 22 deaths per 100,000.

(6) The age-adjusted national average for cirrhosis deaths among Native Indian/Alaskan Natives is 25.9 deaths per 100,000.

(7) The baseline for drug-related deaths is 3.8 drug-related deaths per 100,000 people.

(8) The baseline for hospital emergency department visits related to cocaine use was 39%.

(9) The baseline for hospital emergency department visits related to the use of alcohol in combination with other drugs was 31%.

(10) The average age for the first use of cigarettes is 11.6 years.

(11) The average age for the first use of alcohol is 13.1 years.

(12) The average age for the first use of marijuana is 13.4 years.

(13) The estimated average use of alcohol among youth ages 12–17 is 25.2%.

(14) The estimated average use of alcohol among youth ages 18–20 is 57.9%.

(15) The estimated average use of marijuana among youth ages 12–17 is 6.4%.

(16) The estimated average use of marijuana among youth ages 18–20 is 15.5%.

(17) The estimated average use of cocaine among youth ages 12–17 is 1.1%.

(18) The estimated average use of marijuana among youth ages 18–25 is 4.5%.

(19) Nationally, the proportion of high school seniors engaging in recent occasions of heavy drinking of alcoholic beverages (5 or more drinks in one occasion) is estimated at 33%.

(20) Nationally, the proportion of college students engaging in recent occasions of heavy drinking of alcoholic beverages (5 or more drinks in one occasion) is estimated at 41.7%.

(21) The national average consumption of ethyl alcohol by people aged 14 and older is 2.54 gallons per person.

(22) The proportion of high school seniors who perceive social disapproval associated with the heavy use of alcohol is estimated at 56.4%.

(23) The proportion of high school seniors who perceive social disapproval associated with the occasional use of marijuana is estimated at 71.1%.

(24) The proportion of high school seniors who perceive social disapproval associated with the experimental use of cocaine is estimated at 88.9%.

(25) Nationally, the proportion of high school seniors who associate risk of physical or psychological harm with the heavy use of alcohol is 44%.

(26) Nationally, the proportion of high school seniors who associate risk of physical or psychological harm with the regular use of marijuana is 77.5%.

(27) Nationally, the proportion of high school seniors who associate risk of physical or psychological harm with the experimentation with cocaine is 54.9%.

(28) Nationally, an average of 4.7% of male high school students use anabolic steroids.

Appendix B—Community-Wide Impact Indicators

The following community-wide indicators of alcohol and other drug abuse will be used to establish baseline measures in the target and comparison communities. This list of indicators was compiled by a panel of experts for use in the Community Partnership National Evaluation.

Source information and requirements for supporting documentation will be provided to grantees after awards have been made.

1. Number of single vehicle nighttime accidents.
2. Number of drug positives from urine samples of arrestees (e.g., based on Drug Use Forecasting [DUF] System).
3. Number of arrests for drug possession.
4. Cost and purity of street drugs.
5. Number of drug positives from urine samples of pregnant women at the time of delivery.
6. Number of AOD-related emergency room episodes (e.g., based on Drug Abuse Warning Network [DAWN]).
7. Number of AOD-related deaths (e.g., based on DAWN).
8. Number of individuals on waiting lists for and admissions to in-patient and out-patient AOD program services.
9. Number of referrals and admissions to mental health centers for AOD problems.
10. Incidence of AOD-related birth outcomes (e.g., fetal alcohol syndrome, positive drug toxicology).
11. Incidence of drug-related sexually-transmitted diseases (STDs), including HIV transmissions in AIDS cases.
12. Incidence of AOD-related medical conditions (e.g., cirrhosis of the liver, hepatitis).
13. Number of drug positives from urine samples of job applicants and employees.
14. Aggregate per capita consumption of alcohol, based on alcohol tax revenue data.

Appendix C—Sample Letter of Agreement From Comparison Community

Dear [Name of Project Director of Applicant Community]: I have been informed by an M(_____), of the [*Name of Applicant Program*], that [*Name of Comparison Community*] has been nominated as a possible comparison site to be used in the study supported by the Community Partnership Study Program through the Office for Substance Abuse Prevention, U.S. Department of Health and Human Services.

I understand the nature and intent of this program in developing comprehensive community-wide partnerships for the prevention of alcohol and other drug abuse.

As Chief Executive of [*Name of Comparison Community*], I give my consent for the use of the [*Name of Comparison Community*] as a comparison community for the five years of the program, should be [*Name of Applicant Program*] grant application be funded. Such consent gives program staff from the [*Name of Applicant Program*] project access annually to archival data on indicators of alcohol and other drug abuse within this community (i.e., indicators listed in the Community Partnership Study Application Appendix B). It also allows for the collection of survey data on the indicator in the event that current information is not available through archival sources. It is understood that the use of this information will conform to Federal privacy and confidentiality practices and requirements. It is also understood that the recipient organization of the grant will share all program results with out Community at the end of the project (end of year five), in order to be used in addressing our own alcohol and other drug abuse problems.

Sincerely,

_____

Chief Elected Official.

The reporting requirements contained in this announcement are covered under the Paperwork Reduction Act of 1980, Pubic Law 96–511, OMB approval Number 0937–0189.

The statutory authority for this program is section 508(b)(10)(A) of the Public Health Service Act, as amended by section 2051 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690).

The Catalog of Federal Domestic Assistance number for this program is 93.194.

Joseph Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–25054 Filed 10–16–91; 8:45 am]

BILLING CODE 4160–20

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee

Date, Time, and Place

November 4, 1991, 9:30 a.m., First Floor Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of Meeting and Contact Person

Open public hearing, 9:30 a.m. to 11 a.m., unless public participation does not last that long; closed presentation of data, 11 a.m. to 12 m.; closed committee deliberations, 12 m. to 2 p.m.; open committee discussion, 2 p.m. to 5 p.m.; Kaiser Aziz, Center for Devices and Radiological Health (HFZ-400), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1243.

General Function of the Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 24, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

The committee will discuss a premarket approval application for an over-the-counter urine collection device intended for use by individuals who want to determine if there are levels of certain drugs in a urine sample.

Closed Presentation of Data

The sponsor may present trade secret and/or confidential commercial information regarding the above device. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed Committee Deliberations

The committee will discuss trade secret and/or confidential commercial information regarding the above device. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Medical Imaging Drugs Advisory Committee

Date, Time, and Place

November 7 and 8, 1991, 8:30 a.m., Marriott Hotel, Salons C and D, 620 Perry Pkwy., Gaithersburg, MD.

Type of Meeting and Contact Person

Open public hearing, November 7, 1991, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3:30 p.m.; closed committee deliberations, 3:30 p.m. to 5 p.m.; open committee discussion, November 8, 1991, 8:30 a.m. to 3:30 p.m.; closed committee deliberations, 3:30 p.m. to 5 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General Function of the Committee

The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 22, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

On November 7, 1991, the committee will discuss: (1) A proposal for limited range of contrast media concentrations; and (2) new drug application (NDA) 20-131, Prohance (gadoteradol, Bristol Myers Squibb). On November 8, 1991, the committee will discuss: (1) A Nuclear Regulatory Commission update; and (2) NDA 20-123 (gadodiamide, Sterling Winthrop).

Closed Committee Deliberations

The committee may discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Antiviral Drugs Advisory Committee

Date, Time, and Place

November 12 and 13, 1991, 8:30 a.m., Holiday Inn, Versailles Ballrooms III and IV, 8120 Wisconsin Ave., Bethesda, MD.

Type of Meeting and Contact Person

Open committee discussion, November 12, 1991, 8:30 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5:30 p.m.; closed committee deliberations, November 13, 1991, 8:30 a.m. to 5 p.m., Anna J. Baldwin, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General Function of the Committee

The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex, and other viral, fungal, and mycobacterial infections.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 5, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

The committee will discuss a new drug application supplement for the use of acyclovir (Burroughs-Wellcome) for the treatment of community acquired varicella (chicken pox) in children.

Closed Committee Deliberations

The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, Time, and Place

November 12 and 13, 1991, 8:30 a.m., Versailles Ballroom, Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD.

Type of Meeting and Contact Person

Opening remarks, November 12, 1991, 8:30 a.m. to 9 a.m.; open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4:30 p.m.; open public hearing, November 13, 1991, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4:30 p.m.; Elaine Osier, Center for Biologics Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General Function of the Committee

The committee reviews and evaluates available data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 29, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

On November 12, 1991, the committee will review a pending license application for acellular pertussis vaccine and will discuss clinical endpoints of therapeutic vaccines for individuals infected with human immunodeficiency virus. On November 13, 1991, the committee will discuss studies on the Japanese encephalitis vaccine and the intramural research programs of the Laboratory of Mycoplasma and Laboratory of Immunology, Center for Biologics Evaluation and Research.

Closed Committee Deliberations

The committee will discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy relevant to the intramural scientific program. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(6)).

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee

Date, Time, and Place

November 13 and 14, 1991, 8 a.m., Grand Ballroom, Holiday Inn—Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD.

Type of Meeting and Contact Person

Open public hearing, November 13, 1991, 8 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, to 10 a.m. to 4 p.m.; closed presentation of data, 4 p.m. to 5 p.m.; closed committee deliberations, 5 p.m. to 6 p.m.; open committee discussion, November 14, 1991, 8 a.m. to 4 p.m.; closed presentation of data, 4 p.m. to 5 p.m.; closed committee deliberations, 5 p.m. to 6 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1090.

General Function of the Committee

The Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 24, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

The committee will discuss seven premarket approval applications for silicone gel-filled breast prostheses.

Closed Presentation of Data

The committee may discuss trade secret and/or confidential commercial information regarding silicone gel-filled breast prostheses. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed Committee Deliberations

The committee may discuss trade secret and/or confidential commercial information regarding silicone gel-filled breast prostheses. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee

Date, Time, and Place,

November 22, 1991, 9 a.m., Grand Ballroom, Gaithersburg Marriott, 620 Lakeforest Blvd., Gaithersburg, MD 20877.

Type of Meeting and Contact Person

Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 11:15 a.m.; closed presentation of data, 11:15 a.m. to 11:30 a.m..; open committee discussion, 11:30 to 2 p.m.; closed presentation of data, 2 p.m. to 2:15 p.m.; open committee discussion, 2:15 p.m. to 2:30 p.m.; Marie A. Schroeder, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1036.

General Function of the Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 15, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the

approximate time required to make their comments.

Open Committee Discussion

The committee will discuss premarket approval applications for a prosthetic knee ligament device and an ultrasound bone growth stimulator device.

Closed Presentation of Data

The committee may discuss trade secret and/or confidential commercial information regrading materials, design, and/or manufacturing information for the premarket approval applications for a prosthetic knee ligament device and an ultrasound bone growth stimulator device. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Biological Response Modifiers Advisory Committee

Date, Time, and Place

November 25 and 26, 1991, 8:30 a.m., Bethesda Marriott Hotel, Grand Ballroom, 5151 Pooks Hill Rd., Bethesda, MD.

Type of Meeting and Contact Person

Open public hearing, November 25, 1991, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; open public hearing, November 26, 1991, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; Anna J. Baldwin, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General Function of the Committee

The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 18, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

On November 25, 1991, the committee will discuss the use of alfa-2b interferon (Schering) for the treatment of hepatitis B and review parts of the intramural research program of the Office of Biologics Research, namely the Laboratories of Cytokine Research and Cellular Immunology of the Division of Cytokine Biology. On November 26, 1991, the committee will discuss the use of Myōsinct (Centocor) as an adjunct to the diagnosis of myocardial infarct.

Closed Committee Deliberations

The committee will discuss information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy relevant to the intramural scientific program. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(6)).

Circulatory System Devices Panel of the Medical Devices Advisory Committee

Date, Time, and Place

November 25 and 26, 1991, 8:30 a.m., rm. 503–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of Meeting and Contact Person

Open public hearing, November 25, 1991, 8:30 a.m. to 9:30 p.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; open public hearing, November 26, 1991, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 4:30 p.m.; Wolf Sapirstein, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

General Function of the Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 24, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

The committee will discuss premarket approval applications for a ventricular assist device and one or more of the following: an implantable defibrillator, a vascular angioplasty device, or an implantable pacemaker.

Closed Presentation of Data

The committee will discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed Committee Deliberations

The committee will discuss trade secret and/or confidential information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings.

including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 10, 1991

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91–24968 Filed 10–16–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–4333–10]

Emergency Area Closure of Public Land, North Hills, Headwaters Resource Area, Montana

AGENCY: Butte District Office, Bureau of Land Management, Interior.

ACTION: Emergency area closure of public lands in North Hills area.

SUMMARY: Notice is hereby given that effective immediately, all motorized vehicles uses on public lands within the North Hills area will be restricted to designated open routes from October 15 to December 1. These lands total 5,700 acres and are located about 12 miles northeast of Helena in sections 13, 15, 22–29, 32, 34 and 35, T. 12 N., R. 3W., and sections 19, 29 and 30, T. 12 N., R. 2 W., P.M.M.

This action compliments the objectives of the surrounding block management hunting area being implemented this fall by the Montana Fish, Wildlife, and Parks Department through the cooperation of private landowners, Department of State Lands and the BLM. The purpose of this energency closure is to minimize big-game harassment, soil erosion, vegetative loss, visitor safety hazards and the spread of noxious weeds.

Authority for this action is cited in 43 CFR 8341.2. The closure will remain in affect until further notice.

FOR FURTHER INFORMATION CONTACT: Merle Good, Headwaters Resource Area Manager, P.O. Box 3388, Butte, Montana 59702, commercial telephone 406–494–5059 or FTS–0850.

Dated: September 30, 1991.

Michele Good,

Acting District Manager.

[FR Doc. 91–24971 Filed 10–16–91; 8:45 am]

BILLING CODE 4310–DN–M

[WY–010–00–4331–12]

Cedar Creek Road and Public Land in the Surrounding Area in Big Horn County, WY; Rescindment of Emergency Closure to All Public Entry and Motorized Vehicle Use

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of rescindment of emergency closure to all public entry and motorized vehicle use of the Cedar Creek Road and public land in the surrounding area in Big Horn County, Wyoming. Notice is also given that a

temporary management plan has been prepared to protect valuable paleontological resources in the area, pending consideration of the area as a proposed Area of Critical Environmental Concern (ACEC).

SUMMARY: Notice is hereby given that effective immediately, the Cedar Creek Road and surrounding area closure to all public use and motorized vehicles, including over-the-snow vehicles is rescinded effective October 15, 1991. Notice is also given that a temporary management plan is in effect for the proposed ACEC. This action has been taken to protect and more effectively manage important paleonotolgical resources.

EFFECTIVE DATE: The area closure is rescinded effective October 15, 1991. The temporary management plan is effective immediately and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Duane Whitmer, Area Manager, Cody Resource Area, P.O. Box 518, 1714 Stampede Avenue, Cody, Wyoming 82414. Telephone: (307) 587–2216.

SUPPLEMENTARY INFORMATION: The emergency closure of the Cedar Creek area located northeast of Greybull, Wyoming affecting all public lands in T. 54 N., R. 91 W., sections 8, 9, 16, 17, and N½NE¼ of section 18, Sixth Principal Meridian (comprising approximately 2,200 acres) is rescinded. A temporary management plan has been prepared to protect and manage paleontological resources pending consideration of an area for ACEC designation. This action is being taken to assure that those qualities that make the paleontological resources important are not damaged or otherwise subjected to adverse change and to protect the integrity of the resource values. The area affected by the temporary management plan is located northeast of Greybull, Wyoming and affects all public lands in T. 54 N., R. 91 W., 6th Principal Meridian, sections 4, 5, 7, 8, 9, 16, 17, 18, 19, 20, 29, 30, 31, 32, ant the W½ of section 21 (all public lands west of Red Canyon Creek Road). The area comprises approximately 5,620 acres.

Authority for temporary special management is provided in the Federal Land Policy and Management Act of 1976, sections 102 and 202, and 43 CFR 1610.4–1 through 4.4.

Any person who willfully and without authorization aids and abets, collects, removes, or damages paleontological resources for which a permit is required shall be subject to a fine, or imprisonment, or both (18 U.S.C. 2, 18 U.S.C. 641, 18 U.S.C. 1361).

Dated: October 10, 1991.

Darrell Barnes,

Worland District Manager.

[FR Doc. 91–24958 Filed 10–16–91; 8:45 am]

BILLING CODE 4310–22–M

[OR–050–4320–02:GP2–015]

Prineville District Grazing Advisory Board; Meeting

There will be a meeting of the District Grazing Advisory Board for the Prineville District, Bureau of Land Management, on Tuesday, November 26, 1991, at 10 a.m. The meeting will be held in the District's conference room located at 185 E. Fourth Street, Prineville, Oregon and the public is invited. Topics for discussion will include:

1. Drought update.
2. Summary of rangeland management accomplishments for FY 1991.
3. Status of allotment evaluations including a discussion of the John Day/Deschutes River areas.
4. Central Oregon Natural Resource Coalition (CONRC) update.
5. Anticipated rangeland management program for FY 1992.
6. Anticipated range betterment fund (8100) expenditures for FY 1992.
7. AMPs/CRMPs proposed for FY 1992.
8. Land Issues Forum group approach to vegetation management issues.

Dated: October 7, 1991.

Donald L. Smith,

Acting District Manager.

[FR Doc. 91–24973 Filed 10–16–91; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–4214–10; GP2–006; OR–19731(WASH)]

Order Providing for Opening of Land Subject to Section 24 of the Federal Power Act; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 3.16 acres of National Forest System land that is withdrawn for Power Project No. 719 to permit consummation of a pending land exchange, subject to the provisions of section 24 of the Federal Power Act.

EFFECTIVE DATE: October 17, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 819), and pursuant to the determination of the Federal Energy Regulatory Commission in DVWA–283–Washington, it is ordered as follows:

At 8:30 a.m., on October 17, 1991, the following described land is open to disposal by land exchange as specified in Federal Energy Regulatory Commission determination DVWA–283–Washington, subject to section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818:

Willamette Meridian

That portion of land in the Bennington, Big Vein and Big Vein Chief mill sites, lying within the power project of the Royal Development Company designated Power Project No. 719, as described in the license for said project issued to said Company November 1, 1927, under the provisions of the Federal Water Power Act as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office:

T. 30, N., R. 16 E., unsurveyed, secs. 22 and 27.

The area described contains 3.16 acres in Chelan County, Washington.

Dated: October 7, 1991.

D. Dean Bibles,

State Director, Oregon.

[FR Doc. 91–24926 Filed 10–16–91; 8:45 am]

BILLING CODE 4310–33–M

[CO–050–4212–11]

Recreation and Public Purposes Classification for Lease and Sale, Gilpin County, CO; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action COC–51319; Recreation and Public Purposes Classification for Lease and Sale, Gilpin, County, Colorado.

SUMMARY: The following public lands have been found suitable and are hereby classified for lease and sale under the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 et. seq.), and are segregated from the public land laws including the general mining laws, except for applications under the R&PP Act.

Sixth Principal Meridian, Colorado

T.3S., R. 73W., Section 23: That portion of the NW¼NW¼ lying north of Hamen Avenue and south of the Russell Pride Lode (MS 1009) and the Pittsburgh Lode (MS 1027).

The site contains approximately 0.25 acres.

The Russell Gulch Volunteer Fire Department has filed an application for this site for use as a fire station.

DATES: On or before December 2, 1991 interested parties may submit comments on this action.

FOR FURTHER INFORMATION CONTACT: Priscilla McLain at (303) 236–4399.

ADDRESS: Comments should be directed to the Canon City District Manager, BLM, P.O. Box 2200, Canon City, CO 81215–2200.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this proposal will become final.

Donnie R. Sparks,

District Manager.

[FR Doc. 91–24974 Filed 10–16–91; 8:45 am]

BILLING CODE 4310–JB–M

[CA–067–09–4352.12]

Camping Restriction Order for a Portion of Osborne Scenic Overlook Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Camping restriction.

SUMMARY: The purpose of this restriction is to close a portion of the Osborne Scenic Overlook and the adjacent entrance road to overnight camping. The paved Scenic Overlook is approximately 500 feet long by 75 feet wide and oriented in an east-west direction. The entrance road, leading south from State Highway #78, is approximately ⅓ mile long and approximately 20 feet wide on average.

This restriction will close all of the Scenic Overlook to overnight camping with the exception of that portion that starts 135 feet from the eastern end and extends in a westerly direction for 325 feet. The portion open to camping is approximately 40 feet wide starting from the southern edge of the overlook pavement extending to the north-south center of the overlook. Camping will not be permitted on any portion of the paved entrance road. The legal description for this camping restriction is Township 13S, Range 17½E, Section 25, Southwest ¼. The area to be closed will be posted with appropriate regulatory signs and the pavement will be painted with boundary markings to delineate day use overlook with adjacent day use only parking. Therefore, visitors and their vehicles will be limited to a maximum 2 hour visit per 24 hour period

BACKGROUND: The Osborne Scenic Overlook is historically a heavily used camping area and is generally congested with traffic and camping units on most busy fall, winter, and spring weekends. Day use visitors who drive up to the overlook have found it impossible to reach the view area because of campers. With the development of interpretive displays and the redesignation of this area as a scenic overlook it has become necessary to close a portion of the paved area to overnight camping.

EFFECTIVE DATE: This Restriction will be effective upon the date of publication and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Ranger S.E. Kerlin, Bureau of Land Management, El Centro Resource Area, 333 So. Waterman Avenue, El Centro, CA 92243, (619) 352–5842.

SUPPLEMENTARY INFORMATION: The authority for this Use Restriction is provided at 43 CFR 8365.1–6. Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: October 1, 1991.

Jean Rivers-Council

Acting, District Manager.

[FR Doc. 91–24692 Filed 10–16–91; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–4214–10; CACA 28855]

Notice of Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw 4,766.53 acres of public lands, 1,361.04 acres of public domain reserved minerals, and 396.60 acres of National Forest System lands to protect the lands for the proposed Auburn Dam and Reservoir and its facilities (Auburn-Folsom South Unit, Central Valley Project) near Auburn, California. This notice closes the public lands from surface entry and mining and the public domain reserved minerals and National Forest system lands from location and entry under the United States Mining laws for 2 years. The lands will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E–2845, Sacramento, California 95825, 916–978–4820.

SUPPLEMENTARY INFORMATION: On October 9, 1991, a petition was approved allowing the Bureau of Reclamation to file an application to (1) withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws; (2) to withdraw the following described public domain reserved minerals from location and entry under the mining laws; and (3) to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Public Lands

Mount Diablo Meridian

T. 12 N., R. 8 E.,
  Sec. 12, S½SW¼.
T. 12 N., R. 9 E.,
  Sec. 1, lots 10 and 11;
  Sec. 4, S½N½ (excluding Mineral Survey 5431);
  Sec. 5, lot 48;
  Sec. 18, lot 1.
T. 13 N., R. 9 E.,
  Sec. 1, Mineral Survey 2653;
  Sec. 2, lots 1, 2, and 7, N½SW¼, SW¼SW¼, N½SE¼SW¼, and SW¼SE¼SW¼;
  Sec. 11, lot 2, SE¼SW¼ and SW¼SW¼;
  Sec. 22, NE¼SW¼ and W½SW¼;
  Sec. 23, Mineral Survey U–3 (formerly lot 41), excluding patented land;
  Sec. 24, lot 2 (excluding Mineral Surveys 2516, 5487, 5488, 4962, and 5209), SE¼NE¼, N½NE¼, NE¼NW¼, SE¼SW¼ (excluding Mineral Survey 5488);
  Sec. 25, SE¼NE¼, W½NW¼SE¼, and W½W½W½SW¼SE¼;
  Sec. 28, NE¼NE¼, S½NW¼NE¼, SE¼NW¼, NW¼SW¼, N½SW¼S W¼, E½SW¼SW¼SW¼, and W½SE¼SW¼SW¼;
  Sec. 30, NW¼SE¼;
  Sec. 32, lot 5;
  Sec. 34, lots 4, 11, 19, and 20;
  Sec. 36, lots 1, 2, and 3.
T. 14 N., R. 9 E.,
  Sec. 1, lot 5, NE¼SW¼NW¼, NW¼SW¼NW¼, S½SW¼NW¼, SE¼NW¼, and unpatented land in the W½SW¼ embraced in the Gitaway and Blue Rock quartz mining claims;
  Sec. 12, NW¼NE¼, and SE¼
  Sec. 13, NE¼;
  Sec. 25, lots 1, 2, and 7 (excluding Mineral Survey 5816), lot 8, and NE¼SE¼;
  Sec. 36, lots 2, 3, 7, 8, 9, 14, and 22, and NW¼.
T. 15 N., R. 9 E.,
  Sec. 36, SE¼ SW¼.
T. 13 N., R. 10 E.,
  Sec. 2, lots 9, 14, and 15;
  Sec. 11, E½SE¼;
  Sec. 14, lots 1, 4, 5, and 6, and SW¼SE¼;
  Sec. 19, lot 24;
  Sec. 20, lots 1, 2, and 8, N½NE¼, and SE¼NE¼;
  Sec. 22, lots 1, 2, 7, and 8;
  Sec. 28, NE¼SW¼NE¼, N½SE¼NE¼, and N½NW¼NW¼;

Sec. 30, lot 1 (excluding Mineral Survey 4709), lots 5 and 6, S½NE¼, and NE¼SE¼.
T. 14 N., R. 10 E.,
Sec. 7, lot 6;
Sec. 18, lots 2 to 7, inclusive, and lots 10, 11, 13, and 15;
Sec. 30, lots 4, 8, 9, 10, 15, 16, 17, and 18, E½NW¼, and W½SW¼NW¼.

Public Domain Reserved Minerals

Mount Diablo Meridian

T. 12 N., R. 9 E.,
Sec. 4, lots 5 to 9, inclusive;
Sec. 6, lots 4 to 9, inclusive, and SE¼NE¼.
T. 13 N., R. 9 E.,
Sec. 26, lots 3 and 4, W½SW¼SW¼NE¼, NE¼NW¼, N½SW¼, SW¼SW¼, and W½NW¼NW¼SE¼;
Sec. 28, W½SW¼SW¼SW¼ and E½SE¼SW¼SW¼;
Sec. 32, lots 2 and 3, NE¼, NE¼NW¼, W½NW¼, and N½SE¼;
Sec. 34, lots 3, 5, 6, 8, 14, and 15.
T. 14 N., R. 10 E.,
Sec. 6, lots 8 and 9, N½ lot 15, SW¼ lot 15, lots 17 and 18, N½ lot 19, SW¼ lot 19, and lot 33.

National Forest System Lands

Mount Diablo Meridian

Tahoe National Forest

T. 13 N., R. 11 E.,
Sec. 4, lot 2 (excluding Mineral Survey 5300);
T. 14 N., R. 11 E.,
Sec. 31, S½SE¼SW¼ and SW¼SW¼SE¼;
Sec. 32, SE¼SW¼SW¼ and S½N½SE¼;
Sec. 33, S½N½SW¼, S½N½SE¼, and N½SW¼SE¼;
Sec. 34, N½SW¼, SE¼SW¼, and W½NW¼SE¼.

Tahoe and Eldorado National Forests

T. 13 N., R. 11 E.,
Sec. 4, lot 3 (excluding Mineral Survey 5300).
T. 14 N., R. 11 E.,
Sec. 33, S½SW¼SE¼ (excluding Mineral Survey 5300) and SE¼SE¼.

The areas described aggregate approximately 6,525 acres in Placer and El Dorado counties.

The purpose of the proposed withdrawal is to protect the land for the proposed Auburn Dam and Reservoir and its facilities. Until an application is filed, no further action will be taken on this proposal.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted on the public lands during this segregative period are rights-of-way. The temporary uses which will be permitted by the United States Department of Agriculture during this segregative period are permits, licenses, and cooperative agreements which are compatible with the intended use.

The temporary segregation of the land in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Bureau of Reclamation.

Dated: October 10, 1991.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 91–24959 Filed 10–16–91; 8:45 am]

BILLING CODE 4310–40–M

[CA-940-4214-10; CACA 28888, CACA 28889, CACA 28890, CACA 28891, CACA 28892, CACA 28893, CACA 28894, CACA 28895, CACA 28896]

Proposed Withdrawals and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes to withdraw 2,132.69 acres of National Forest System lands in Sierra, Nevada, Placer and Yuba counties, to protect various recreation areas, roadside zones, and an administrative site. This notice closes the lands for up to two years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATE: Comments and requests for a public meeting must be received by January 15, 1992.

ADDRESS: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, room E–2845, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4820.

SUPPLEMENTARY INFORMATION: On October 7, 1991 the United States Department of Agriculture filed 9 applications to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Mount Diablo Meridian

Tahoe National Forest

Serial No. CACA 28888
T. 20 N., R. 12 E.,
Sec. 3, W½SE¼;
Sec. 5, S½N½SW¼, S½SW¼;
Sec. 8, N½N½NW¼;
Sec. 10, NW¼;
Sec. 26, S½SE¼SW¼;
Sec. 27, S½SE¼.
Serial No. CACA 28889
T. 17 N., R. 12 E.,
Sec. 24, N½N½;
Serial No. CACA 28890
T. 20 N., R. 11 E.,
Sec. 28, NE¼SE¼,S½SE¼SW¼;
Sec. 31, SE¼N½ lot 8, lot 11, SW¼NW¼ SE¼, NE¼SW¼SE¼;
Sec. 33, N½NE¼NW¼.
Serial No. CACA 28891
T. 17 N., R. 11 E.,
Sec. 6, SE¼SE¼SW¼, S½SE¼;
Sec. 9, lot 15.
Serial No. CACA 28892
T. 19 N., R. 9 E.,
Sec. 1, N½SE¼, N½S¼SE¼.
Serial No. CACA 28893
T. 21 N., R. 12 E.,
Sec. 21, SE¼NE¼, NE¼SE¼;
Sec. 22, SW¼NW¼, NW¼SW¼;
Sec. 29, W½E½NE¼, W½NE¼, E½E½ NW¼.
T. 20 N., R. 13 E.
Sec. 5, lot 4;
Sec. 6, W½ lot 1, E½ Lot 4;
Sec. 9, N½NW¼;
Sec. 11, S½NW¼NW¼, N½SW¼NW¼.
T. 21 N., R. 13 E.,
Sec. 31, SE¼SE¼SW¼, S½SW¼SE¼;
Sec. 32, S½S½SW¼.
Serial No. CACA 28894
T. 14 N., R. 13 E.,
Sec. 18, lots 5, 6 and 8, SE¼SW¼;
Sec. 19, Lot 1, NE¼NW¼.
Serial No. CACA 28895
T. 17 N., R. 12 E.,
Sec. 8, N½NE¼, SW¼NE¼, NE¼NW¼, SE¼SW¼, SW¼SE¼.
T. 18 N., R. 12 E.,
Sec. 34, W½NE¼.
Serial No. CACA 28896
T. 18 N., R. 8 E.,
Sec. 28, SW¼SW¼SE¼NE¼, W½NE¼ SE¼, E½NW¼SE¼, N½N½N W¼SE¼†SE¼.

The areas described aggregate 2,132.69 acres in Sierra, Nevada, Placer and Yuba counties.

Notice is hereby given that an opportunity for public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized office that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the schedule date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. No licenses, permits, cooperative agreements, or discretionary land use authorization of a temporary nature requiring the approval of an authorized officer of the Forest Service will be allowed during the segregation period other than those allowed by the nature of the existing improvements on these sites.

Dated: October 10, 1991.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 91-24960 Filed 10-16-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-4214-10; CACA 28943, CACA 28944, CACA 28945, CACA 28946, CACA 28947, CACA 28948, CACA 28949]

Proposed Withdrawals and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes to withdraw 2,025.36 acres of National Forest System lands in Nevada and Placer counties, to protect various recreation areas, roadside zones, and administrative sites. This notice closes the lands for up to two years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for a public meeting must be received by January 15, 1992.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, room E-2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4820.

SUPPLEMENTARY INFORMATION: In October, 1991, the United States Department of Agriculture filed 7 applications to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Mount Diablo Meridian

Tahoe National Forest

Serial No. CACA 28943
T. 15 N., R. 16 E.,
Sec. 24, Tracts 37 and 38.
Serial No. CACA 28944
T. 18 N., R. 12 E.,
Sec. 2, lots 3 and 4, S½NW¼;
Sec. 20, S½S½N½, N½N½S½;
T. 19 N., R. 12 E.,
Sec. 32, W½SW¼, W½NE¼SW¼, SE¼NE¼SW¼, SE¼SW¼, SW¼SW¼SE¼.
Serial No. CACA 28945
T. 15 N., R. 14 E.,
Sec. 2, SE¼ lot 15, S½ lot 16, N½ lot 17, E½ lot 18.
Serial No. CACA 28946
T. 17 N., R. 13 E.,
Sec. 10, lot 1, NE¼NE¼, E½SE¼;
Sec. 16, SE¼;
Sec. 27, S½NE¼.
Serial No. CACA 28947
T. 17 N., R. 14 E.,
Sec. 24, NE¼SE¼NW¼SE¼, S½SE¼NW¼SE¼, S½NE¼SE¼, E½SE¼SE¼, E½W½SE¼SE¼;
T. 17 N., R. 15 E.,
Sec. 20, NW¼NE¼, SE¼SE¼, NE¼SE¼ excepting therefrom a triangular parcel of land described as follows: Beginning at the east quarter corner of Sec. 20, thence westerly along the north line of the southeast quarter of Sec. 20, crossing the "C" center line of the railroad from west of Summit to east of Lakeview, at or near Engineer Station "C" 37—49.5, a distance of 714.3 ft. to a point distant 100 ft. southwesterly measured at a right angle from said center line of railroad; thence S. 73°53'E. parallel to said center line of railroad, a distance of 743.5 ft. to a point in the east line crossing said center northerly along said east line of Sec. 20, thence line of railroad at or near Engineer Station "C" 33—81.0 a distance of 206.4 ft. to the point of beginning; containing an area of 1.692 acres, more or less;
Sec. 28, N½.
Serial No. CACA 28948
T. 16 N., R. 16 E.,
Sec. 4, lots 5, 6, 9, 10, 17 and 20;
Sec. 21, lots 2 and 4;
Sec. 34, lot 2.
T. 17 N., R. 16 E.,
Sec. 21, lots 10 and 11;
Sec. 28, lot 3.
Serial No. CACA 28949
T. 17 N., R. 13 E.,
Sec. 28, S½NE¼, SW¼, N½SE¼.

The areas described aggregate 2,025.36 acres in Nevada and Placer counties.

Notice is hereby given that an opportunity for public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized office that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the schedule date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. No licenses, permits, cooperative agreements, or discretionary land use authorization of a temporary nature requiring the approval of an authorized officer of the Forest Service will be allowed during the segregation period other than those allowed by the nature of the existing improvements on these sites.

Dated: October 10, 1991.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 91-24961 Filed 10-16-91; 8:45 am]

BILLING CODE 4310-40-M

[OR-943-4214-10; GP2-007; OR-45401]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon; Correction

The land description in FR Doc. 91-15323, published on page 29497, in the issue of Thursday, June 27, 1991, is hereby corrected as follows:

On page 294978, under T. 30 S., R. 15 W., reads Sec. 15, "SE¼NE¼" and is corrected to read "SW¼NE¼".

Dated: October 2, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-24929 Filed 10-16-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-10; GP2-013; OR-47551]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon; Correction

The land description in FR Doc. 91-22663, published on page 47803, in the issue of Friday, September 20, 1991, is hereby corrected as follows:

On page 47803, under the Whiteman National Forest reads "T. 7 N., R. 35½ E.," and "T. 7 N., R. 36 E.," and is corrected to read "T. 7 S., R. 35½ E.," and "T. 7 S., R. 36 E.,".

Dated: October 3, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-24930 Filed 10-16-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-10; GP2-009; OR-11158]

Termination of Proposed Withdrawal and Reservation of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service has cancelled its application to withdraw 1,554 acres of National Forest System lands in the Umatilla and Whitman National Forests for the North Fork John Day Streamside Zone, Elkhorn Drive Roadside Zone, North Fork John Day (Bridge) Campground, and the Chinese Walls Historical Site. This action will terminate the proposed withdrawal and will relieve the lands of the temporary segregative effect.

EFFECTIVE DATE: November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: The notice of the United States Department of Agriculture, Forest Service application OR-11158 for withdrawal was published as FR Doc. 79-22163 of the issue date July 18, 1979, and amended as FR Doc. 80-16112 of the issue dated May 28, 1980, and as FR Doc. 83-4828 of the issue dated February 25, 1983. The purpose of the proposed withdrawal was to protect the scenic and recreational values of the North Fork John Day Streamside Zone, Elkhorn Drive Roadside Zone, North Fork John Day (Bridge) Campground, and the Chinese Walls Historical Site. The applicant agency has determined that the proposed withdrawal is no longer needed and has cancelled the application in its entirety as to the following described lands:

Willamette Meridian

Umatilla National Forest

North Fork John Day (Bridge) Campground Addition

T. 7S., R. 35½ E.,
sec. 34, W½NE¼.

North Fork John Day Streamside Zone

A strip of land 660 feet in width being 330 feet on each side of and running parallel and concentric with the centerline of the North Fork John Day River through the following described subdivisions:
T. 7 S. R. 35½ E.,
sec. 34, NE¼NW¼.

Elkhorn Drive Roadside Zone

A strip of land 1,000 feet in width being 500 feet on each side of and running parallel and concentric with the centerline of Elkhorn Drive through the following described subdivisions:
T. 7 S., R. 35½ E.,
sec. 34, E½SE¼.

Whitman National Forest

Chinese Walls Historical Site

T. 8 S., R. 35½ E.,
sec. 34, that portion of the W½W½ extending from 4964100mN to 4964700mN and 388200mE to 388450mE (Universal Transverse Mercator grid).

Elkhorn Drive Roadside Zone

A strip of land 1,000 feet in width being 500 feet on each side of and running parallel and concentric with the centerline of Elkhorn Drive through the following described subdivisions:
T. 7 S., R. 35½ E.,
sec. 35, W½SW¼.
T. 7S., R. 36 E.,
sec. 33, N½NE¼ and S½NE¼NW¼.

North Fork John Day River Streamside Zone

A strip of land 660 feet in width being 330 feet on each side of and running parallel and concentric with the centerline of the North Fork John Day River through the following described subdivisions:
T. 7 S., R. 36 E.,
sec. 27, SE¼SE¼SW¼ and S½SE¼SE¼;
sec. 34, N½N½NE¼, NE¼NW¼, S½NW¼NW¼, and N½S½NW¼;
sec. 35, SW¼SW¼NE¼, NW¼NW¼, NE¼SW¼NW¼, SE¼NW¼, and W½SE¼.
T. 8 S., R. 36 E.,
sec. 2, lot 2, SW¼NE¼, and SE¼;
sec 11, lot 2 and N½NE¼;
sec. 12, lot 1, W½NW¼NW¼, and SE¼NW¼NW¼.

North Fork John Day Streamside—Elkhorn Drive Roadside Zones (Combined Area)

A strip of land of variable width located between a line 500 feet on the northerly side of the centerline of Elkhorn Drive and a line 330 feet on the southerly side of the centerline of the North Fork John Day River through the following described subdivisions:
T. 7 S., R. 35½ E.,
sec. 35, S½N½, SW¼NW¼NW¼, N½NE¼SW¼, and N½N½SE¼;
sec. 36, S½N½, NE¼SW¼, N½NW¼SW¼, and N½SE¼.
T. 7 S., R. 36 E.,
sec. 31, lots 1, 2, and 3, NE¼, E½NW¼, N½NE¼SW¼, and N½NW¼SE¼;
sec. 32, N½, NE¼SW¼, N½NW¼SW¼, and N½SE¼;
sec. 33, S½N½ and NW¼SW¼.

The areas described aggregate approximately 1,554 acres in Grant County, Oregon.

Pursuant to the regulation 43 CFR 2310.2-1(c), at 8:30 a.m., on November 18, 1991, the proposed withdrawal will be terminated and the lands will be relieved of the segregative effect of the above-referenced application. The lands are included in two new applications for withdrawal and remain closed to location and entry under the United States mining laws (30 U.S.C. ch. 2).

Dated: October 2, 1991

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-24927 Filed 10-16-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-10; GP2-008; OR-10139]

Termination of Proposed Withdrawal and Reservation of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service has cancelled its application to withdraw 545 acres of National Forest System lands in the Mt. Hood National Forest for the Bagby Research Natural Area. This action will terminate the proposed withdrawal and will relieve the lands of the temporary segregative effects.

EFFECTIVE DATE: October 20, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-1717.

SUPPLEMENTARY INFORMATION: The notice of the United States Department of Agriculture, Forest Service application OR-10139 for the withdrawal was published as FR Doc. 73-23681 of the issue of November 7, 1973. The purpose of the proposed withdrawal was to protect the Bagby Research Natural Area. The applicant agency has determined that the proposed withdrawal is no longer needed and has cancelled the application in its entirety as to the following described lands:

Willamette Meridian

Mt. Hood National Forest

T. 7 S., R. 5 E.,

Two tracts of lands located within the following described subdivisions and more particularly identified and described upon the official records of the Oregon State Office, Bureau of Land Management:
sec. 22, SE¼SW¼, NE¼NE¼SE¼, S½N½SE¼, and S½SE¼;
sec. 23, S½NE¼SW¼, NW¼SW¼, S½SW¼, and SW¼SE¼;
sec. 26, NE¼NE¼, W½NE¼, NW¼SE¼NE¼, N½NW¼, SE¼NW¼, N½NE¼SW¼, and NW¼NW¼SE¼;
sec. 27, NE¼NE¼, W½NW¼, NE¼NW¼, and N½SE¼NW¼.

The areas described aggregate approximately 545 acres in Clackamas County, Oregon.

Pursuant to the regulation 43 CFR 2310.2–1(c), at 8:30 a.m., on October 20, 1991, the proposed withdrawal will be terminated and the land will be relieved of the segregative effect of the above-referenced application. The land is included in a new application for withdrawal and remains closed to location and entry under the United States mining laws (30 U.S.C. ch. 2).

Dated: October 1, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91–24928 Filed 10–16–91; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

[DES 91–28]

Availability of the Draft Environmental Impact Statement and Intent To Hold Public Hearings Regarding Subsistence Management for Federal Public Lands in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement and Intent to Hold Public Hearings Regarding Subsistence Management for Federal Public Lands in Alaska.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has prepared, for public review, a Draft Environmental Impact Statement (EIS) for Subsistence Management for Federal Public Lands in Alaska pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. The EIS describes four alternatives for the Federal Subsistence Management Program in Alaska pursuant to Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (Pub. L. 96–487, 16 U.S.C. 3111–3126) and the environmental consequences of implementing each alternative.

DATES: During the public review period, formal hearings on the EIS will be held in the following locations:

Akhiok, Nov. 19
Allakaket, Nov. 4.
Anchorage, Nov. 12, Fairview Recreation Center, 1121 E. 10th, Anchorage, AK 99510
Aniak, Nov. 18.
Barrow, Oct. 30
Bethel, Nov. 19.
Cantwell, Nov. 14
Chignik, Nov. 7.
Cordova, Oct. 30
Dillingham, Nov. 6.
Emmonak, Oct. 30
Fairbanks, Nov. 5.
Fort Yukon, Nov. 6
Galena, Nov. 14.
Glennallen, Oct. 30
Hooper Bay, Oct. 29.
Iliamna, Nov. 8
Juneau, Nov. 4.
Kaktovik, Oct. 29
Ketchikan, Nov. 6.
King Cove, Nov. 4
King Salmon, Nov. 5.
Kipnuk, Oct. 28
Kodiak, Nov. 14.
Kotzebue, Nov. 13
Larsen Bay, Nov. 21.
McGrath, Nov. 7
Nome, Nov. 12.
Northway, Oct. 28
Old Harbor, Nov. 12.
Port Heiden, Nov. 6
Quinhagak, Nov. 14.
Sitka, Nov. 5
Soldotna/Kenai, Nov. 13.
St. Mary's, Nov. 20
Togiak, Nov. 7.
Tok, Oct. 29
Unalaska, Oct. 29.
Yakutat, Oct. 31
Washington, DC, Nov. 19, Interior Building, 1849 C Street, Washington, D.C. 20240.

Written public comments will be accepted regarding this EIS until December 2, 1991.

ADDRESSES: Single copies of the draft EIS can be obtained from the U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage Alaska 99503. Written comments may be sent to the Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman Howse, Assistant Director for Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628; telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of ANILCA requires the Secretary of the Interior and the Secretary of Agriculture (Secretaries) to implement a joint program to grant a priority for subsistence uses of fish and wildlife resources by rural residents on Federal public lands. Until recently, the State of Alaska has managed the subsistence program on public lands pursuant to Section 805 of Title VIII of ANILCA. In December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. This ruling placed the State out of compliance with Title VIII. Consequently, the Secretaries were required to assume responsibility for the implementation of Title VIII of ANILCA on Federal public lands on July 1, 1990.

On June 29, 1990 the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114). This program is administered by a Federal Subsistence Board made up of a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. These five agencies within the Federal Government are responsible for management of Federal public lands covered by Title VIII of ANILCA. All Board members have reviewed this notice and concur in its publication.

Public Comments and Hearings

Interested persons may submit written comments regarding the EIS to the address noted at the beginning of this notice. And opportunity for oral comment on the proposals will be provided at the locations and dates listed in this notice.

Copies of the draft EIS will also be available for review by the public at the office of the Regional Director, at the above address, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th & C Streets NW., Washington, DC 20240

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE. Multnomah Street, Suite 1692, Portland, OR 97232

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225

Drafting Information

The primary author of this notice is Cecil R. Kuhn, Subsistence Office,

Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska.

Guy P. Million,

Acting Alaska Regional Director, U.S. Fish and Wildlife Service.

Approved:

Dated: October 9, 1991.

Willie R. Taylor,

Acting Director, Office of Environmental Affairs.

[FR Doc. 91-24857 Filed 10-16-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget, Paperwork Reduction Project (1024-NPS1), Washington, DC 20508, Telephone 202-395-7340.

Title: National Park Service Aircraft Overflight Study

Abstract: The National Park Aircraft Overflight Act, (Pub. L. 100-91) directs the National Park Service to identify any problems or adverse impacts associated with aircraft overflights in units of the National Park System and provide information regarding the types of overflight which may be impacting park visitors. The primary issue under consideration is that visitors' enjoyment of national parks may be diminished by aircraft flying over these areas. The National Park Service's data collection period will be during FY 1992 and FY 1993. The chosen methodology includes both acoustical measurement and surveys of park visitors using personal interviews and self-administered surveys in conjunction with mail questionnaires. Surveys of park visitors will be conducted in 40 areas nationwide. These surveys will identify: (1) A dose-response relationship between aircraft sound and human response using several acoustic and human response metrics; (2) the magnitude of the problem in relation to other impacts on recreation enjoyment; (3) the circumstances under which human response to aircraft is most severe; (4) responses to various policies for managing aircraft overflights; and (5) the extent of the problem throughout units of the National Park Service. The resulting understanding of this issue should provide a basis for recommendations of strategies to manage this potential conflict to reduce any impact on park users, while taking into account the needs of the aircraft operators and passengers.

Bureau Form Number: None

Frequency: One Time

Description of Respondents: Individuals

Estimated Completion Time: .13 hours

Annual Responses: 58,050

Annual Burden Hours: 7,538

Bureau Clearance Officer: Mario R. Fraire, (202) 208-5093

Terry Tesar,

Acting Information Collection Clearance Officer.

[FR Doc. 91-24966 Filed 10-16-91; 8:45 am]

BILLING CODE 4310-70-M

Jadwin Canoe Rental, Inc.; Concession Contract

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Jadwin Canoe Rental, Inc. authorizing it to continue to provide canoe rental facilities and services for the public at Ozark National Scenic Riverways, Missouri for a period of four (4) years from January 1, 1991 to December 31, 1994.

EFFECTIVE DATE: December 18, 1991.

ADDRESS: Interested parties should contact the Superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, Missouri, 63965, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed it's obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1990, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: October 8, 1991.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 91-24984 Filed 10-16-91; 8:45 am]

BILLING CODE 4310-70-M

National Capital Memorial Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, October 29, 1991, at 1:30 p.m., at the Commission of Fine Arts, 441 F Street, NW., suite 312, Washington, DC.

The Commission was established by Public Law 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

James Ridenour, Chairman, Director, National Park Service, Washington, DC

George M. White, Architect of the Capitol, Washington, DC

Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC

J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC

Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC

Honorable Sharon Pratt Dixon, Mayor of the District of Columbia, Washington, DC

Honorable Richard G. Austin, Administrator, General Services Administration, Washington, DC

Honorable Richard Cheney, Secretary of Defense, Washington, DC

The purpose of the meeting will be to review and take acton on the following:

I. New Business
II. Old Business

Dated: October 10, 1991.

Burnice T. Kearney,

Acting Regional Director, National Capital Region.

[FR Doc. 91-24967 Filed 10-16-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-331]

Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 12, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Chips and Technologies, Inc., 3050 Zanker Road, San Jose, California 95134. Amended complaints were filed on September 27, 1991, and October 2, 1991. The complaint, as amended, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain microcomputer memory controllers, components thereof and products containing same by reason of alleged direct infringement of claim 1 of U.S. Letters Patent 4,924,375, claims 1–8, 13 and 14 of U.S. Letters Patent 4,899,272, and claim 1 of U.S. Letters Patent 5,040,153, and by reason of alleged contributory infringement of claim 4 of U.S. Letters Patent 4,899,272; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

FOR FURTHER INFORMATION CONTACT: Thomas L. Jarvis, Esq., Office of unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2568.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on October 10, 1991, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain microcomputer memory controllers, components thereof, and products containing same by reason of alleged infringement of claim 1 of U.S. Letters Patent 4,924,375, claims 1–8, 13 and 14 of U.S. Patent 4,899,272, or claim 1 of U.S. Letters Patent 5,040,153, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complaint is—

Chips and Technologies, Inc., 3050 Zanker Road, San Jose, California 95134.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sun Electronics Corporation, 250 Asahi Kochino-cho, Konan-City Aichi 483, Japan.

OPTi Computer, Inc., 2525 Walsh Avenue, Santa Clara, California 95051.

ETEQ Microsystems, Inc., 1900 McCarthy Boulevard, suite 110, Milpitas, California 95035.

Elite Microelectronics, Inc., 4003 N. First Street, San Jose, California 95134.

(c) Thomas L. Jarvis, Esq., Office of Unfair Import, Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401J, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 210.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: October 10, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-25006 Filed 10-16-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-325]

Certain Static Random Access Memories and Integrated Circuit Devices Containing Same, Processes for Making Same, Components Thereof, and Products Containing Same; Commission Determination Not To Review an Initial Determination Terminating an Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation terminating the investigation on the basis of a settlement agriculture.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

SUPPLEMENTARY INFORMATION: On August 12, 1991, complainant SGS-Thomson Microelectronics, Inc. and respondents Seiko Epson Corporation, S–MOS Systems, Inc. and Epson America, Inc. filed a joint motion to terminate the investigation on the basis of a settlement agriculture between the parties. The motion was supported by the Commission investigative attorneys. On September 9, 1991, the presiding ALJ issued an ID (Order No. 15) terminating the investigation on the basis of the settlement agriculture. No petitions for review, or agency or public comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Issued: October 10, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–25005 Filed 10–16–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–135]

Annual Synthetic Organic Chemicals (SOC) Report; Request for Comments

AGENCY: United States International Trade Commission.

ACTION: Extension of deadline for comments on changes to the format of the annual SOC report.

EFFECTIVE DATE: October 7, 1991.

FOR FURTHER INFORMATION CONTACT: James A. Emanuel or John J. Gersic, Energy and Chemicals Division, Office of Industries (telephone 202–205–3367 and 202–205–3342, respectively).

BACKGROUND: The original notice published in the **Federal Register** of July 17, 1991 (56 FR 32590), soliciting public comments on certain changes to the format and means to simplify data reporting requirements for the Commission's annual Synthetic Organic Chemicals (SOC) reports is amended to extend the deadline for comment from November 15, 1991, to March 12, 1992.

This action is being taken to ensure that all interested parties have adequate time to comment.

SUBMISSION OF COMMENTS: A signed original of each set of comments should be sent to James A. Emanuel, Energy and Chemicals Division, U.S. International Trade Commission, 500 E. Street SW., Washington DC 20436, by March 12, 1992.

Hearing-impaired persons are advised that the information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: October 9, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–25007 Filed 10–16–91; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Office of the Inspector General

Membership of the Inspector General's 1991 Senior Executive Service Performance Review Board

AGENCY: Office of the Inspector General, Justice.

ACTION: Notice of the Office of the Inspector General 1991 SES Performance Review Board.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice, Office of the Inspector General announces the membership of its SES Performance Review Board. The purpose of the Performance Review Board is to provide fair and impartial review of Senior Executive Service performance appraisals.

FOR FURTHER INFORMATION CONTACT: James L. Anadale, Personnel Officer, Office of the Inspector General, Department of Justice, Washington, DC 20530. Telephone: (202) 633–3351.

W. Edward Lee,

Deputy Assistant Inspector General for Administration, Office of the Inspector General.

Department of Justice Office of the Inspector General

Joel Gallay, Legal Counsel, Office of the Inspector General, General Services Administration.

Thomas T. Sheehan, Assistant Inspector General for Investigations, Office of the Inspector General, Department of the Interior.

Howard L. Sribnick, General Counsel, Office of the Inspector General, Department of Justice.

Allen J. Vander-Staay, Assistant Inspector General for Management and Planning, Office of the Inspector General, Department of Justice.

[FR Doc. 91–24931 Filed 10–16–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; Varian Associates, Inc., et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a civil Complaint and an accompanying Competitive Impact Statement have been filed in the United States District Court for the Northern District of Illinois in *United States of America* v. *Varian Associates, Inc. and Richardson Electronics, Ltd.*, Civil Action No. 91C6211. The Court also has received a Stipulation and a proposed Final Judgment. The Complaint alleges that Varian Associates, Inc. ("Varian") of Palo Alto, California, and Richardson Electronics, Ltd. ("Richardson") of LaFox, Illinois, conspired to monopolize certain power grid tube markets in violation of section 2 of the Sherman Act.

Power grid tubes are high vacuum electron tubes that are capable of handling at least twenty-five (25) watts and that have as their defining elements a cathode for the emission of electrons, an anode for the collection of electrons, and one or more (interspersed) grids for controlling or regulating the number of electrons that flow between the cathode and anode. Varian is the largest manufacturer of power grid tubes in the world. Richardson is the dominant or only distributor for virtually all manufacturers of power grid tubes that sell in the United States. On February

26, 1986, the defendants formed a joint venture partnership known as VASCO, making Richardson Varian's only United States distributor for power grid tubes. Varian and Richardson together account for about 70 percent of power grid tube sales in the United States.

Count 1 of the Complaint stems from an agreement between Varian and Richardson that began in or about February 1986, to collect rebuildable power grid tube carcasses (also known as "dud tubes") in order to prevent them from being rebuilt by companies known as tube rebuilders. Tube rebuilders rebuild dud tubes and sell them as operational, rebuilt power grid tubes, which compete with new power grid tubes. The Complaint alleges that Varian and Richardson conspired to monopolize the manufacture and sale in the United States of power grid tubes that compete with tubes that could be rebuilt from the particular dud tubes that the companies agreed to collect. The complaint also alleges that the effects of this conspiracy are that competition in the United States for sales of such power grid tubes has been reduced or eliminated and that domestic prices for such tubes have increased. Varian and Richardson together account for over 90 percent of sales in the United States of power grid tubes rebuilt from the particular dud tubes that Varian and Richardson agreed to collect.

Count 2 of the Complaint stems from an agreement between Varian and Richardson that the companies, through VASCO, would cooperate with each other in acquiring competing manufacturers and distributors of power grid tubes. Count 2 alleges that Varian and Richardson conspired to monopolize the manufacture and sale of power grid tubes that are competitive with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex Electronic Corporation ("Amperex").

Prior to July 1988, Amperex was a significant manufacturer of power grid tubes, and for numerous tube types, Varian and Amperex were the only producers or the dominant producers. In July 1988, Richardson acquired Amperex on behalf of itself and Varian in order to eliminate competition from Amperex and enable Varian and Richardson to increase prices of Varian power grid tubes that formerly were competitive with Amperex tubes.

After the acquisition, Richardson discontinued producing the Amperex tubes that were competitive with Varian tubes, making Varian the dominant or only manufacturer of these tubes and Richardson the only distributor of these tubes. The Complaint alleges that because of this conspiracy, domestic prices of such power grid tubes have increased.

The proposed Final Judgment is designed to stop the defendants' conspiracies to monopolize and to help restore competition in the power grid tube industry. Under the proposed Final Judgment, Varian and Richardson would be required to dissolve VASCO. Varian also would be prohibited from granting to Richardson any exclusive distribution rights in the United States. The proposed Final Judgment also would restrain conduct in which the companies engaged through their joint venture that either is or could be anticompetitive, and includes prohibitions relating to the acquisition of dud tubes, pricing discussions and agreements, and the sharing of profits. Finally, the companies would be prohibited from acquiring competitors in the power grid tube industry without the consent of the Department of Justice.

Public comment is invited within the statutory sixty (60) day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, Department of Justice, room 10–437, 555 Fourth Street, NW., Washington, DC. 20001 (telephone: 202–307–0924).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Stipulation

It is hereby stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Northern District of Illinois.

(2) The parties consent that a Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) The parties shall by October 1, 1991 abide by and comply with the provisions of the proposed Final Judgment, except for paragraph VI.A. thereof, pending its entry.

(4) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: September 30, 1991.

For Plaintiff United States of America:

James F. Rill,

Assistant Attorney General.

Joseph H. Widmar,

P. Terry Lubeck,

John F. Greaney,

Attorneys, Antitrust Division U.S. Department of Justice.

Michael L. Scott,

Kevin Quirk,

Attorneys, Antitrust Division U.S. Department of Justice Room 10–437, 555 4th Street, NW., Washington, DC 20001 (202) 307–0939.

For Defendant Varian Associates, Inc.:

William F. Baxter, Esquire,

Shearman & Sterling, 555 California Street, San Francisco, California 94104.

For Defendant Richardson Electronics, Ltd.:

Donald I. Baker, Esquire,

Glen S. Howard, Esquire,

W. Todd Miller, Esquire,

Sutherland, Asbill & Brennan, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2404.

Stipulation Approved for Filing

Dated:

United States District Judge

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on October 1, 1991, alleging two conspiracies between defendants to monopolize trade and commerce in certain power grid tubes sold in the United States;

And Whereas, plaintiff and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without any testimony having been taken, and without this Final Judgment constituting any evidence against or any admission by any party with respect to any issue of law or fact;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 2 of the Sherman Act (15 U.S.C. 2).

II

As used in this Final Judgment:

A. *Varian* means defendant Varian Associates, Inc., each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

B *Richardson* means defendant Richardson Electronics, Ltd., each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

C. *VASCO* means Varian Supply Company, a joint venture partnership between Varian and Richardson organized under the laws of the State of California and having its principal place of business in LaFox, Illinois.

D. *Power grid tube* means a high vacuum electron tube that is capable of handling at least twenty-five (25) watts and that has as its defining elements a cathode for the emission of electrons, an anode for the collection of electrons, and one or more (interspered) grids for controlling or regulating the number of electrons that flow between the cathode and anode.

E. *Dud tube* means a power grid tube that is of a type that can be rebuilt and that is broken, damaged, spent, or otherwise incapable of performing its intended function, whether or not the specific tube can be rebuilt.

F. *Tube rebuilder* means an entity that is regularly engaged in the business of rebuilding dud tubes and selling them as operational, rebuilt power grid tubes.

G. *Market value of a dud tube* means the value of the dud tube to tube rebuilders.

III

A. The provisions of this Final Judgment shall apply to defendants, to their successors or assigns, to their subsidiaries or affiliates, and to their directors, officers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

B. Prior to the expiration of this Final Judgment, each defendant shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV

A Neither defendant shall purchase or otherwise acquire, either directly or indirectly, any power grid tube that the acquiring defendant knows or reasonably expects to be a dud tube for the purpose of increasing the cost of, or decreasing competition from, any tube rebuilders. A dud tube shall be deemed to have been acquired for at least one of the foregoing prohibited purposes, unless:

1. The dud tube is acquired with the written consent of the Antitrust Division of the Department of Justice,

2. The dud tube is acquired pursuant to a contract between the acquiring defendant and a bona fide user of the tube requiring the tube to be rebuilt and returned to the user, or

3. Within one year of acquiring the dud tube, the acquiring defendant either,

(a) Rebuilds the dud tube,

(b) Transfers the dud tube to an independent tube rebuilder,

(c) Makes the dud tube not rebuildable as a result of engineering bench tests and measurements that are part of a bona fide research program intended to improve the performance or characteristics of tubes of that general type, provided that the costs to the acquiring defendant of the bench tests and measurements on the tube are always at least three (3) times greater than the then current market value of the tube, except that the acquiring defendant can make up to five (5) tubes of each tube type not rebuildable in any twelve (12) month period as a result of such tests and measurements where such costs are less than three (3) times greater than the then current market value of the tube, provided that such costs are at least equal to such market value,

(d) Makes the dud tube not rebuildable as a result of engineering bench tests and measurements that are part of a bona fide research program intended to enable the acquiring defendant to build a power grid tube of that particular tube type, provided that the acquiring defendant did not manufacture the tube, and provided further that the acquiring defendant does not make more than ten (10) tubes not rebuildable under this paragraph IV.A.3.(d) in any twelve (12) month period.

(e) Makes the dud tube not rebuildable as a result of a bona fide program to salvage and recycle parts and materials from dud tubes, provided that the value to the acquiring defendant of the salvaged and recycled parts and materials (either as receipts from sale or as provided costs from reuse) is greater than the then current market value of the tube (net of transaction costs), and provided further that the acquiring defendant does not make more than forty (40) tubes not rebuildable under this paragraph IV.A.3.(e) in any twelve (12) month period,

(f) Returns the dud tube to its manufacturer, provided the tube was acquired from a customer under a warranty claim, or

(g) Publishes an announcement in an electronics industry publication that for sixty (60) days from the publication date, the dud tube is available at no cost (except shipping costs and specified reasonable handling fees) to the first tube rebuilder or bona fide user of that particular type of power grid tube to respond to the announcement and either the acquiring defendant receives no such response within the sixty (60) day period or, if such a response is received, that defendant ships the dud tube to the first such respondent within ten (10) days after expiration of the sixty (60) day period.

B. Each defendant shall for each dud tube it acquires after entry of this Final Judgment, except pursuant to paragraph IV.A.1., above, prepare and maintain contemporaneous, accurate, and detailed records of its acquisition, handling, and disposition of that dud tube, and in the case of paragraph IV.A.3.(c), above, of the then current market value of the dud tube and the costs of the bench tests and measurements on the tube, and in the case of paragraph IV.A.3.(e), above, of the then current market value of the dud tube and the value of the salvaged and recycled parts and materials therefrom; provided, however, that the acquiring defendant must keep such records for a particular tube that it acquires only from the date that it knows or reasonably expects the particular tube to be a dud tube. If either defendant's records for any dud tube do not clearly demonstrate that the tube was acquired, handled, and disposed of pursuant to paragraph IV.A., above, then such dud tube will be rebuttably presumed to have been acquired by that defendant in violation of paragraph IV.A.

C For the purpose of paragraphs IV.A. and IV.B., an acquiring defendant does

not "reasonably expect" a power grid tube to be a dud tube if it is acquired as part of a collection of power grid tubes, the majority of which the acquiring defendant reasonably expects to be operational; *Provided*, However, that if the acquiring defendant knows or reasonably expects that any specific tubes in such collection are dud tubes, then that defendant knows or reasonably expects each such tube to be a dud tube.

V

Neither Varian nor Richardson shall, directly or indirectly, merge or consolidate with, or acquire securities or a significant amount of the power grid tube assets of, any other company that manufacturers, rebuilds, or distributes power grid tubes, without first obtaining the written consent of the Antitrust Division of the Department of Justice. For purposes of the immediately preceding sentence, a "significant amount of the power grid tube assets" of a company shall mean twenty-five (25) percent or more of that company's power grid tube assets, provided that the power grid tube assets being acquired have an aggregate value greater than two hundred and fifty thousand dollars ($250,000). Notwithstanding the foregoing, in the case of any such acquisition of power grid tube assets having an aggregate value of less than one and one-half million dollars ($1,500,000), the requirements of this section V. shall be deemed to be satisfied upon sixty (60) days prior written notice to the Antitrust Division of such acquisition. A purchase of power grid tudes in the usual and ordinary course of business for both the seller and purchaser shall not be deemed to be an acquisition of power grid tube assets under this paragraph V., and an acquisition of securities of such a company by an individual or a corporate pension fund shall not be deemed to be an acquisition of securities under this section V., provided that, after the particular transaction, the individual or fund does not own, on a fully converted basis, more than one (1) percent of the outstanding voting shares, or any other class of securities, of the company.

VI

A. Immediately upon the entry of this Final Judgment, defendants shall dissolve VASCO the entry of this Final Judgment, defendants shall dissolve VASCO and shall terminate all sales to, through, or by VASCO. Defendants shall take no action thereafter, either directly or indirectly, to reconstitute VASCO without first obtaining the written consent of the Antitrust Divisions of the Department of Justice. Defendants shall wind up VASCO within thirty (30) days after the entry of this Final Judgment.

B. Varian shall not grant to Richardson, either directly or indirectly, any exclusive distribution rights in the United States for any Varian power grid tubes.

C. Varian and Richardson shall not share, either directly or indirectly, any profits (i.e., any amount in excess of the cost of acquiring any tubes) from the sale in the United States of any power grid tubes, without first obtaining the written consent of the Antitrust Divisions of the Department of Justice.

D. Varian and Richardson shall not, either directly or indirectly, discuss or agree upon any price at which either Varian or Richardson sells or will sell to any third party any power grid tubes not manufactured by Varian.

E. Varian and Richardson shall not, either directly or indirectly, discuss or agree upon any price at which either Varian or Richardson purchases or will purchase any dud tubes from any third party.

F. Varian and Richardson shall not agree on any price or price level at which Richardson, as principal, will sell to any third party any power grid tubes manufactured by Varian.

G. Except where Richardson is acting as Varian's agent in connection with any sales in the United States to any Federal, state, or local governments, any original equipment manufacturers, or any academic or other research facilities, Varian and Richardson shall not agree on any prices or price levels at which Varian sells or will sell to any third party any power grid tubes manufactured by Varian.

H. Varian shall not grant to Richardson, either directly or indirectly, distribution rights in the United States for any Varian power grid tubes that are more favorable than Varian grants to any other person.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice made to any defendant at its principal offices, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, employees, agents, or other persons acting for or on behalf of the defendant, all of whom may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to any defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section VII. shall be divulged by any representatives of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by any defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks such pertinent page of such material, "Subject to claim of privilege under rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than grand jury proceedings) to which the defendant is not a party.

VIII

Defendants shall:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment.

IX

Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of the Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

X

This Final Judgment will expire on the tenth anniversary of its entry.

XI

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On September 30, 1991, the United States filed a civil antitrust complaint under section 4 of the Sherman Act, 15 U.S.C. 4, alleging that defendants Varian Associates, Inc. ("Varian") and Richardson Electronics, Ltd., ("Richardson"), and co-conspirators, engaged in two conspiracies to monopolize interstate trade and commerce in violation of section 2 of the Sherman Act, 15 U.S.C. 2. The conspiracies reduced competition for the manufacture and sale in the United States of certain power grid tubes, resulting in increased domestic prices for these tubes.

Power grid tubes are high vacuum electron tubes that amplify and control electrical signals. Several industries employer power grid tubes in various applications, including television broadcasting, radio broadcasting, and industrial heating. Original equipment manufacturers ("OEMs") purchase power grid tubes for installation in new equipment. For this application, OEMs must purchase power grid tubes that are socket-interchangeable with the tubes the equipment is designed to use or redesign the equipment to use a different tube. Users of such equipment also purchase power grid tubes to replace tubes that break, fail, or wear out. Customers who purchase power grid tubes for replacement can use only tubes that are socket-interchangeable with tubes for which the original equipment was designed, unless the equipment is redesigned to use a different tube.

A dud tube is a power grid tube that is broken, damaged, spent, or otherwise incapable of operating, but that can be rebuilt. Some firms rebuild dud tubes and sell them as operational, rebuilt power grid tubes, which compete with new power grid tubes for replacement uses.

Varian is the largest manufacturer of power grid tubes in the world, and Richardson is the dominant or only distributor for virtually all manufacturers of power grid tubes that sell in the United States. Richardson is Varian's only United States distributor for replacement power grid tube sales. In February 1986, Varian and Richardson agreed to collect particular dud tubes that are socket-interchangeable with new power grid tubes produced by Varian and sold by Richardson for replacement uses, to keep the dud tubes from being rebuilt by tube rebuilders. In July 1988, Richardson acquired on behalf of itself and Varian a power grid tube manufacturer, Amperex Electronic Corporation ("Amperex"), and discontinued producing Amperex tubes that were socket-interchangeable with tubes produced by Varian, making Varian the dominant or only manufacturer of these tubes and seller of these tubes to OEMs in the United States and making Richardson the only or dominant seller of these tubes for replacement uses.

The Complaint alleges in Count I that beginning in or about February, 1986, the defendants and co-conspirators conspired to monopolize the manufacture and sale in the United States of power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that defendants agreed to collect. The Complaint alleges that the effects of this conspiracy are that competition in the United States for sales or such power grid tubes has been reduced or eliminated and that domestic prices for such tubes have increased.

The Complaint alleges in Count II that the defendants and co-conspirators combined and conspired to monopolize the manufacture and sale of power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex. The Complaint alleges that the effects of this conspiracy are that competition for sales in the United States of such power grid tubes has been eliminated and that domestic prices for such tubes have increased.

The United States and defendants have stipulated that the Court may enter the proposed Final Judgment, which is designed to halt these conspiracies and help undo their anticompetitive effects, after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for any further proceedings necessary to interpret, enforce, or modify the Judgment, or to punish violations of any provisions of the Judgment.

II. Description of the Practices Involved in the Alleged Violation

On or about February 26, 1986, Varian and Richardson formed Varian Supply Company ("VASCO"), a joint venture partnership organized under the laws of the State of California and having its principal offices in LaFox, Illinois. In the VASCO joint venture agreement, Varian made Richardson its only United States distributor for the sale of power grid tubes for replacement uses. The VASCO joint venture agreement contained a provision stating, "Upon request by Varian, Richardson shall conduct an aggressive program to purchase tube carcasses [dud tubes]." Pursuant to this provision, defendants agreed to acquire dud tubes that are socket-interchangeable with power grid tubes produced by Varian and sold by Richardson in the United States for replacement uses. The purpose of their agreement was to reduce or eliminate the supply of these dud tubes to tube rebuilders in order to reduce or eliminate competition from tube rebuilders and enable defendants to increase their prices for new power grid tubes that are socket-interchangeable with tubes that could be rebuilt from these dud tubes. Beginning about January 1988, pursuant to its agreement with Varian, Richardson acquired from time to time a significant number of such dud tubes and continued to do so until about August 1988.

Defendants also agreed to use VASCO as a vehicle to acquire competing manufacturers and distributors of power grid tubes.

In 1988, defendants agreed to have VASCO acquire Amperex, a tube manufacturer that competed with Varian for the sale of many types and sizes of power grid tubes. Pursuant to this agreement, Richardson acquired

Amperex in or about July 1988. Following the acquisition, Richardson discontinued the manufacture of Amperex power grid tube types that had competed directly with Varian tube types, making Varian the only or the dominant manufacturer of such tube types.

After January 1988, defendants increased their prices for power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that Richardson collected pursuant to its agreement with Varian, and after the Amperex acquisition, they also increased their prices for power grid tubes that are socket-interchangeable with power grid tubes of the type that prior to July 1988 were produced by both Varian and Amperex.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is intended to prevent and restrain defendants from engaging in activity in furtherance of (a) their conspiracy to monopolize the manufacture and sale of power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that defendants agreed to collect and (b) their conspiracy to monopolize the manufacture and sale of power grid tubes that are socket-interchangeable with tubes of the types that prior to July 1988 were produced by both Varian and Amperex. The proposed Final Judgment also would require the defendants to take action designed to dissipate the effects of the conspiracies.

A. Prohibitions and Obligations

Under the Final Judgment, defendants would be required to dissolve VASCO and terminate all sales made by or through VASCO immediately upon entry of the Final Judgment and to wind up the business of VASCO within thirty (30) days after the entry of the Final Judgment. Thereafter, defendants would be prohibited from taking any action, either directly or indirectly, to reconstitute VASCO without first obtaining the written consent of the Antitrust Division of the Department of Justice. The Final Judgment also would prohibit Varian from granting to Richardson, either directly or indirectly, any exclusive distribution rights in the United States for any Varian power grid tubes. It further would prohibit Varian from granting to Richardson, either directly or indirectly, distribution rights in the United States for any Varian power grid tubes that are more favorable than Varian grants to any other person.

In addition, the Final Judgment would prohibit certain activity by the defendants regarding the acquisition of dud tubes. The defendants would be prohibited from discussing or agreeing, either directly or indirectly, to any price at which either defendant purchases or will purchase any dud tubes from any third party. The defendants would be further prohibited from purchasing or otherwise acquiring, either directly or indirectly, any power grid tube that the acquiring defendant knows or reasonably expects to be a dud tube for the purpose of increasing the cost of, or decreasing competition from, any tube rebuilders. The Judgment provides that a dud tube would be deemed to have been acquired for at least one of the two prohibited purposes unless it was acquired with the written consent of the Antitrust Division of the Department of Justice or was acquired under certain limited circumstances described in the Judgment. The limited circumstances are designed to allow the defendants to make bona fide purchases of dud tubes for research, rebuilding, or recycling in connection with their power grid tube businesses. The Judgment also would require each defendant to prepare and maintain, for each dud tube it acquires after entry of the Final Judgment, contemporaneous, accurate, and detailed records of the acquisition, handling, and disposition of the tube. Absent such records clearly demonstrating that one of the limited exceptions apply to a dud tube acquisition, the acquiring defendant would be rebuttably presumed to have violated the Judgment's prohibition against acquiring dud tubes.

Morever, the Final Judgment would prohibit the defendants from combining with their competitors. Neither defendant would be allowed, either directly or indirectly, to merge or consolidate with, or to acquire securities or a significant amount of the power grid tube assets of, any company that manufacturers, rebuilds, or distributes power grid tubes, without first obtaining the written consent of the Antitrust Division of the Department of Justice. The Final Judgment defines a "significant amount of the power grid tube assets" of a company in a manner that would prohibit all competitively important asset purchases. This prohibition of the Final Judgment also would not apply to the acquisition of securities in the usual and ordinary course of business of both the seller and purchaser or, under certain circumstances, by an individual or a corporate pension fund.

Finally, the Final Judgment would prohibit the defendants from engaging in other conduct that either is or, depending on the circumstances, could be anticompetitive. The defendants would be prohibited from sharing any profits from the sale of any power grid tubes in the United States, without first obtaining the written consent of the Antitrust Division. The defendants also would not be allowed, either directly or indirectly, to discuss or agree upon any price at which either Richardson or Varian sells or will sell to any third party any power grid tubes not manufactured by Varian, to agree on any price or price level at which Richardson, as principal, will sell to any third party any power grid tubes manufactured by Varian, or to agree on any prices or price levels at which Varian sells or will sell to any third party any power grid tubes manufactured by Varian. This latter prohibition would not apply where Richardson is acting as Varian's agent in connection with any sales in the United States to any federal, state, or local governments, any original equipment manufacturers, or any academic or other research facilities.

The Final Judgment would allow an authorized representative of the Department of Justice to visit defendants' offices, after providing reasonable notice, to inspect their records and to conduct interviews regarding any matters contained in the Final Judgment. Defendants also would be required, upon request, to submit written reports, under oath, pertaining to any matters contained in the Final Judgment.

The Final Judgment also would obligate each defendant to establish and implement a plan for monitoring compliance with the terms of the Final Judgment by its officers, directors, agents, managers, and other employees. Defendants would have to file with the Court and provide plaintiff, within ninety (90) days after entry of the Final Judgment, an affidavit stating that the defendants have complied with the terms of the Final Judgment and stating the manner of their compliance.

B. Effect of The Proposed Final Judgment On Competition

The relief in the proposed Final Judgment is designed to bring to a halt defendants' conspiracies to monopolize particular power grid tubes and to help restore competition to the power grid tube industry. The provision dissolving VASCO, the injunction against Varian granting Richardson any exclusive distribution rights in the United States,

and the injunction against Richardson obtaining more favorable distribution rights in the United States will allow for competition in the domestic distribution of Varian power grid tubes.

The prohibitions relating to the acquisition of dud tubes are designed to keep Varian or Richardson from limiting or reducing competition from tube rebuilders in the manufacture and sale in the United States of power grid tubes. The prohibitions seek to ensure that Varian and Richardson purchase dud tubes only for legitimate purposes and not for the purpose of reducing the supply of tube carcasses available to rebuilders. The injunction against mergers and acquisition by either defendant is designed to prevent them from causing further consolidation of the power grid tube industry without the consent of the Antitrust Division.

The injunctions against pricing discussions and agreements are designed to prohibit either defendant from influencing the price at which the other defendant sells power grid tubes, whether those tubes are produced by Varian or by manufacturers other than Varian. The injunction against defendants sharing any profits from the sale of any power grid tubes in the United States is designed to ensure that Richardson's incentives to distribute tubes produced by other manufacturers are not influenced by Varian, beyond the price it charges Richardson for Varian tubes.

The Final Judgment provides the Department of Justice with sufficient powers to monitor the defendants' compliance. The Department of Justice believes that the proposed Final Judgment contains adequate provisions to remedy the effects of the alleged conspiracies, promote competition in the sale of power grid tubes in the United States, and prevent further violations of the type alleged in the Complaint.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuits that may be brought against defendants in this matter.

V. Procedures Available for Modification of the Proposed Final Judgment

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and responses of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Judiciary Center Building, room 10–437, 555 4th Street, NW., Washington, D.C. 20001.

The proposed Final Judgment provides that the Court would retain jurisdiction over this action and that any party to the Final Judgment may apply to the Court for any order necessary or appropriate for the construction, implementation, or modification of any provisions of the Final Judgment, for the enforcement of compliance with any provisions of the Final Judgment, and for the punishment of any violation of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The only alternative to the proposed Final Judgment would be a full trial of the case. The Department of Justice, believes, however, that such litigation, which would take a long time to finally resolve and would involve substantial cost to the United States, is not warranted since the proposed Final Judgment provides essentially all of the relief the government would be likely to obtain after a trial on the merits.

Under the circumstances, the United States determined that the public interest would be served best by obtaining an enforceable consent decree and filing the decree with the Court immediately. Although the proposed Final Judgment may not be entered until the criteria established by the APPA have been satisfied, the prohibitions of the Final Judgment will take effect immediately because the defendants have stipulated that they will comply with the terms of the Final Judgment, except for the provision that would dissolve VASCO, pending its entry by the Court.

VII. Determinative Materials and Documents

The United States considers the Distributors Agreement Between Varian Associates, Inc. and Richardson Electronics, Ltd., dated August 8, 1991 ("Distributor Agreement"), which will replace the VASCO joint venture agreement, to be a determinative document. The Distributor Agreement not only describes the terms of Varian and Richardson's future relationship, but also describes some terms of any relationship between Varian and any other United States distributor. The Distributor Agreement was determinative in formulating the proposed Final Judgment. Accordingly, the United States will file a copy of it with this Competitive Impact Statement.

Dated: September 30, 1991.

Respectively submitted,

Michael L. Scott,

Kevin Quirk,

Attorneys, Antitrust Division, U.S. Department of Justice, room 10–437, 555 4th Street, NW., Washington, DC 20001, (202) 307–0939.

Distributor Agreement Between Varian Associates, Inc. and Richardson Electronics, Ltd.

TABLE OF CONTENTS

Distributor Agreement

This Agreement is entered into as of the Effective Date (defined below) by and between Richardson Electronics, Ltd., a Delaware corporation ("Distributor"), and Varian Associates, Inc., a Delaware corporation, acting through its Power Grid & X-Ray Tube Products business ("Varian").

Definitions

1. *Agreement* as used herein means this Distributor Agreement entered into by and between the parties hereto.

2. *Direct Accounts* as used herein means

(a) those actual or potential customers, purchasers and users, listed on Exhibit A hereto, of Products at the locations specified on such exhibit and

(b) those accounts and/or locations thereof which, although not listed on Exhibit A, are hereafter designated as Direct Accounts in the manner provided in this Agreement,

sales to which will be handled, except as otherwise provided herein, exclusively by and through Varian, its affiliates, subsidiaries, and agents.

3. *Distributor Accounts* as used herein means

(a) any legal person to whom Distributor has heretofore sold or quoted products and not a Direct Account listed on Exhibit A hereto and

(b) those accounts and/or locations thereof which are hereafter designated as Distributor Accounts in the manner provided in this Agreement,

sales to which will be handled, except as otherwise provided herein, exclusively by Distributor and other duly appointed Stocking Distributors.

4. *EC* as used herein means the countries which make up the European Community, which as of the Effective Date are:

Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, United Kingdom.

5. *New Account* as used herein means any actual or potential customer, purchaser, or user of Products, which is neither a Direct Account nor a Distributor Account prior to the time at which it is first identified by, or comes to the attention of, Varian or Distributor.

6. *Territory* as used herein means all countries world-wide.

7. *Effective Date* as used herein means the date on which (a) Final Judgment is entered by the U.S. District Court for the Northern District of Illinois, Eastern Division, in *United States* v. *Varian Associates, Inc. and Richardson Electronics, Ltd.*, and (b) all exhibits hereto are agreed upon and signed in final form, the date upon which this Agreement becomes effective and binding upon the parties hereto. Within ten (10) days after the entry of such Final Judgment, this Agreement shall be amended to set forth the date thereof.

8. *Products* as used herein means those power grid tube products offered for sale by Varian's Power Grid & X-Ray Tube Products business, except

(a) Those products listed on Exhibit B hereto;

(b) Any new power grid tube product developed and manufactured by Varian which Varian decides, in its sole discretion, shall be excluded from Products;

(c) Any product, manufactured by Varian for another tube manufacturer and marketed under such other tube manufacturer's name, tradename, or trademark, which is a product manufactured by such other tube manufacturer at or before the time of Varian's agreement to manufacture it for such other tube manufacturer, provided, however, that if such product is Socket-Compatible with any Product, then this subparagraph 8(c) exception shall apply only to the extent that Varian manufactures during any 12-month period a number of units less than one hundred and five percent (105%) of the number of units manufactured by the manufacturer of such tube during the 12-month period preceding the agreement;

(d) Any product which Varian begins to manufacture after the Effective Date as a result of its acquisition of the business or assets of another tube manufacturer and which is a product manufactured by such other tube manufacturer at or before the time of Varian's acquisition from such tube manufacturer of the assets used to make such product, provided, however, that if such product Socket-Compatible with any Product, then this subparagraph 8(d) exception shall apply only to the extent that Varian manufactures during any 12-month period a number of units less than one hundred and five percent (105%) of the number of units manufactured by the manufacturer of such tube during the 12-month period preceding the acquisition; and

(e) products manufactured by Varian which are identical with, or which (in view of their characteristics, price, and intended use) are considered by users as equivalent to, products manufactured by Distributor.

9. *Stocking Distributor* as used herein means any legal person which is, or intends to become, actively engaged, as its usual and customary business in the territory for which such person is appointed as a Stocking Distributor, on a regular and continuous basis in buying, stocking, and selling electronic components to a broad base of customers located in the territory for which such person is appointed as a Stocking Distributor; has been appointed by Varian as a Stocking Distributor under a formal written distributor agreement which includes obligations to maintain inventory stocks of Products as set forth in section 2.7 hereof and to not, either directly or through any third party, seek customers for any of the Products or establish or maintain any branch or depot for the distribution of Products outside the territory for which such Stocking Distributor is appointed; and which is in compliance and good standing under the requirements of such written distributor agreement.

10. *Term* as used herein means the term of this Agreement, which shall begin on the Effective Date, shall continue for an initial period of three (3) years, and shall automatically continue thereafter for successive three (3) year periods unless sooner terminated in the manner provided in section 9 hereof.

11. *Socket-Compatible* as used herein means the capability of different tubes to be placed and used in the same socket of an existing piece of equipment without modification of such equipment.

1. Distributor Appointment

During the Term, Varian appoints Distributor to act:

(a) As Varian's non-exclusive Stocking Distributor of Products to Distributor Accounts located in the United States, Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Rumania, and the Union of Soviet Socialist Republics, and any independent countries which are thereafter formed from territory within the boundaries thereof;

(b) As Varian's exclusive Stocking Distributor of Products to any person in the EC; and

(c) As Varian's exclusive Stocking Distributor of Products to Distributor Accounts in the remainder of the Territory.

Varian reserves the right to sell Products as contemplated by section 1.5 hereof, and to sell, deliver or service products or services (other than Products) to any other customers or users without limitation worldwide.

1.1 Other Stocking Distributors

A. Varian may from time to time, at its sole election, appoint other Stocking Distributors to sell Products to Distributor Accounts located in the United States, Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Rumania, or the Union of Soviet Socialist Republics, or any independent countries which are thereafter formed from territory within the boundaries thereof.

B. Varian may also, from time to time, appoint other Stocking Distributors to sell Products to Distributor Accounts located in Japan if (i) Varian develops and brings to market by the second anniversary of the Effective Date three new Products which are commercially-competitive with products being marketed in Japan by other tube manufacturers, and (ii) Distributor fails to increase its sales of Products in Japan by a factor of at least ten (10%) per year (compounded annually) and by an average of twenty percent (20%) per year over such three-year period; this calculation shall include Varian's own sales in Japan of the three new Products described in this sentence. For purposes of this section 1.1.B, Distributor's sales of Products during the 12-month period preceding the Effective Date to Distributor Accounts located in Japan shall be the amount set forth as such in a letter, dated August 7, 1991, from Dennis R. Gandy to Robert Chapman.

1.2 Modifications to Distributor Accounts

Distributor may from time to time propose to Varian any additions, modifications or changes ("Changes") in the Distributor Accounts and Varian may, in its sole discretion, agree to such proposed Changes by a writing delivered to Distributor no later than 30 days following receipt of Distributor's proposed Change to the Distributor Accounts. Varian's failure to respond to a proposed Change within such 30-day period shall constitute rejection of the proposed Change.

Varian may from time to time propose to Distributor any Changes in the Distributor Accounts and Distributor may in its sole discretion agree to such proposed Changes by a writing delivered to Varian no later than 30 days following receipt of Varian's proposed Change to the Distributor Accounts. Distributor's failure to respond to a proposed Change within such 30-day period shall constitute rejection of the proposed Change.

1.3 Modification to Direct Accounts

Distributor may from time to time propose to Varian any Changes in the list of Direct Accounts and Varian may, in its sole discretion, agree to such proposed Changes by a writing delivered to Distributor no later than 30 days following receipt of Distributor's proposed Change to the list of Direct Accounts. Varian's failure to respond to a proposed Change within such 30-day period shall constitute rejection of the proposed Change.

1.4 Limitation on Distributor's Sale of Products; Limited Authorization to Sell to Direct Accounts

Distributor will sell Products only to Distributor Accounts, but may also

(a) Sell Products to any customer, including Direct Accounts, in the EC;

(b) Sell Products to any Direct Account not located in the EC, provided, however, that such sales may be made only if

(i) The units of Product to be sold to such customer in any given transaction are ten (10) or less *or*

(ii) Regardless of the number of units of Product to be sold to such customer in any given transaction, the aggregate invoice value of such transaction is less than Twenty-Five Thousand Dollars ($25,000.00),

Provided, however, that Distributor shall not knowingly split, nor allow any such Direct Account to split, transactions for the purpose of qualifying them under this section 1.4(b);

(c) Sell Products to Direct Accounts to complete open orders Distributor has accepted as of the Effective Date from any such Direct Account; and

(d) At Varian's request, sell Products to Direct Accounts as an agent of Varian where (i) the order is taken in Varian's name as seller, (ii) the order is subject to acceptance or rejection by Varian in its sole discretion, *and* (iii) Product to fill the order is shipped by Varian from its inventory. When Distributor makes sales under this section 1.4(d) as agent for Varian, it shall be paid a commission thereon equal to a percentage, as may from time to time be agreed upon, of the invoice value of the sale. Such commission shall be paid upon shipment of Product to the customer.

1.5 Varian's Sale of Products

Varian will sell Product only (i) to Distributor, (ii) to any other Stocking Distributor taking delivery in, and for resale in, the territory for which such person is appointed as a Stocking Distributor, or for passive sales into the EC, (iii) to Direct Accounts, or (iv) as described in the following paragraph of this section 1.5. Varian may sell to any of the above through agents but shall not make sales to agents.

Varian may make passive sales to Distributor Accounts located in the EC for delivery F.O.B. Varian outside the EC, but Varian shall neither solicit Distributor Accounts located in the EC nor establish branch offices or warehouses in the EC for servicing such Distributor Accounts. If Varian receives in the EC from a Distributor Account a request for quote or purchase order for Product, it shall advise the customer of the availability of Products from Distributor. To reimburse Distributor for its general costs associated with its sales promotion and market development efforts with respect to Products, Varian shall pay to Distributor a fee of fifteen percent (15%) of the invoice amount on Varian's sales permitted under this section 1.5 to Distributor Accounts.

1.6 New Accounts

Any New Account which comes to the attention of Distributor or Varian shall be deemed to be a Distributor Account, subject, however, to subsequent redesignation by Varian as a Direct Account if such customer meets the criteria and general description of Direct Account set forth in Exhibit A hereto. Such redesignation, if any, shall be made by the Marketing Manager of Varian Power Grid & X-Ray Tube Products (or the functional equivalent thereof) by written notice to Distributor,

within 30 days after the earliest of the date on which (i) Distributor gives Varian written notice of such New Account, or (ii) Varian receives a request for quote or a purchase order for Product from such New Account if Varian has knowledge that such account is a New Account. Unless Varian shall make such redesignation with respect to a New Account and shall provide Distributor written notice thereof, it shall refer such New Account to Distributor or to other Stocking Distributors to service such customers' needs for Products.

Varian's sales of Products to any such New Account prior to its redesignation as a Direct Account shall be subject to the provisions of section 1.7 hereof. In the event of any dispute as to whether a New Account meets the criteria and general description of a Direct Account set forth on Exhibit A, the parties shall cooperate (pursuant to section 12.7 hereof) to resolve such dispute expeditiously.

1.7 Reconciliation

In the event that (a) Varian accepts and fills a purchase order for Product other than as permitted by section 1.5 hereof, or (b) Distributor accepts and fills a purchase order for Product other than as permitted by section 1.4 hereof, then, in such event, there shall be due and owning from the party accepting such order, and such party shall immediately make good and full payment to the other party of, an amount equal to thirty percent (30%) of the invoice value of the order. Any such payment by Varian shall be divided among all Stocking Distributors appointed for the territory in which the customer to which the sale was made is located, in proportion to such Stocking Distributors' respective sales of Products during the 12-month period ending on the date of the sale in question. In the event of any such payment by a Stocking Distributor, such payment shall be made to Varian. The parties stipulate and agree that the foregoing amount represents a reasonable and fair estimate of the loss of business, suffered by the party which, under the terms of this Agreement, was entitled to accept such purchase order, and such payment shall be deemed to remedy the breach which results from such occurrence.

1.8 Scope of Authority

Distributor and Varian are independent companies each solely responsible for its own business, and neither shall have any power or authority to act for, bind, or commit the other, except as provided in section 1.4(d) hereof. Neither party shall apply for, use or authorize the use of in any way, the trademarks, tradenames, or trade dress of the other party or any of its subsidiary or affiliated companies (hereinafter collectively "Trademarks") without written permission of the other party; provided, however, that either party may utilize the Trademarks of the other set forth in Exhibit C in connection with its respective sales efforts for Products (including exhibits at trade shows, catalogs, etc.) upon blanket written notice to the other and unless instructed by the other not to use such Trademark. Each party's consent to the other's use of Trademarks for the sale of Products pursuant to this Agreement shall not be unreasonably withheld or delayed. Any benefits or value which accrue to either party's Trademarks because of use by the other party, including but not limited to the names and Trademarks "Varian," "Eimac," the "VA" in a circle Varian logo, the stylized word "Varian" and "Eimac" in a circle logo, the "Machlett" elliptical log, "Richardson" or "REL," "National," "Cetron," or any of either party's stylized logos, shall be for the benefit of the owner of the particular Trademark, and any proprietary interest therein shall be owned by the owner of the Trademark. All uses of the Trademarks by either party must clearly identify the owner of the Trademark.

2. Duties and Obligations of Distributor

During the Term, Distributor will perform as follows:

2.1 Product Promotion

Distributor shall use reasonable efforts to promote the sale of Products throughout the Territory and will purchase Products from Varian at the prices and under the other terms of this Agreement. Varian acknowledges that Distributor distributes and sells products manufactured by others (some of which may be competitive with Products). Notwithstanding anything contained in this Agreement, Distributor shall not be restricted or limited in any way or manner in the distribution or sales of such other manufacturers' products and any such sales activities of Distributor shall not be deemed a violation of any of Distributor's obligations under this Agreement even though such activities may result in reduced sales of Products.

Distributor shall at all times use reasonable efforts to encourage accounts to which it is entitled to sell under this Agreement to purchase Products where such Products meet the customer's technical requirements. If an account to which Distributor is entitled to sell under this Agreement asks for a product which meets certain specifications, requests assistance in identifying a product usable for a given application or requests a quotation or places an order specifying a product only by technical specification or requirements which a Product will satisfy, then Distributor shall recommend the purchase of the appropriate Product and shall always first quote or offer to sell the appropriate Product to such customer. If an account to which distributor is entitled to sell under this Agreement requests either a quotation or to purchase a product by use of Varian's brand name, Distributor shall always first quote or offer to sell the appropriate Product. If an account to which distributor is entitled to sell under this Agreement requests either a quotation or to purchase a product by use of an alphanumeric designation utilized by Varian, but without specifying a particular brand name, Distributor shall first quote or offer to sell the appropriate Product.

2.2 Advertising

Distributor will use reasonable efforts to promote and advertise the sale, use and application of Products through proper means throughout the Territory.

2.3 Promotion Materials

Distributor will familiarize its sales representative employees, customers, and potential customers with the characteristics and capabilities of Products, including but not limited to by utilizing the promotional/educational materials furnished to Distributor by Varian.

2.4 Sales Representatives and Training

Distributor will employ well trained sales representatives and provide competent sales direction and management adequate to sell Products.

2.5 Reports

Distributor will prepare monthly point of sale and inventory reports of Products stocked by Distributor broken down by individual Products in order to enable Varian to make referrals, at Varian's sole discretion, of customers to Distributor. These reports shall be delivered to Varian within thirty (30) days after the end of each month.

2.6 Meetings

Varian and Distributor will meet quarterly, or at such other intervals agreed to by the parties, to discuss the status of Distributor's pending purchase orders to Varian and to forecast Distributor's anticipated Products

purchase requirements over the next 12 month period.

Distributor and Varian may from time to time conduct meetings for the purposes of planning effective and efficient marketing of Products, which meetings may involve discussion of, among other things: historical prices of Products and competitive products; competitive activities; manufacturers commencing or ceasing manufacturing activities; new potential manufacturers or products; market plans with respect to Products or new products; customer concerns and problems; market conditions; product applications and uses; potential new products; new product development; advertising and marketing programs; orders and deliveries; production schedules; distribution practices; warranties and warranty claims; Product performance; and training.

2.7 Inventory Stocking Requirements

During the Term, in order to ensure maintenance of adequate inventories and a sufficiently broad range of Products to promptly serve customers' needs, Distributor will maintain on hand at its place(s) of business in the Territory at all times an aggregate minimum dollar value of Product inventories as follows:

(a) During the first 12 months of the Term a minimum of $500,000 inventory of Products;

(b) During the second 12 months of the Term the greater of either $750,000 inventory of Products or four months' supply based on Distributor's annual aggregate sales during the first 12 months of the Term;

(c) During the third 12 months of the Term, a minimum of $875,000 inventory of Products;

(d) During the fourth 12 months of the Term and each 12-month period thereafter while the Agreement remains in effect, a minimum of $1 million inventory of Products; and

(e) At all times, such inventories of Product types and delivery facilities to enable Distributor to promptly service accounts from stock and meet Distributor's customers' needs, provided, however, that Varian may elect at any time, subject to section 12.4 hereof, to increase the minimum inventory level requirements of this section 2.7 to a level no greater than $7 million if it determines, in its sole discretion, that such higher inventory requirements are warranted.

2.8 No Disparagement

Distributor will not misrepresent the capabilities, qualities, or characteristics of Products, no will Distributor relabel Products (except with Varian's written consent) or knowingly offer to sell or represent to a customer that another manufacturer's product is a Product manufactured by Varian or that Varian's Product is manufactured by another manufacturer.

2.9 Confidential Information of Varian

Distributor will protect the confidentiality of Varian's confidential information as follows:

(a) All drawings, technical documents or other information concerning Varian's Products or parts thereof and business, which Varian has submitted to Distributor either before or after the execution of this Agreement, shall remain the property of Varian;

(b) Except for Varian's standard product literature which is publicly available, Distributor will not disclose to third parties, without the written consent of Varian, any of Varian's drawings and technical documents relating to Products or parts thereof or business documents, including but not limited to such drawings, technical documents, information, and data which are specifically identified and marked "Confidential" or "Proprietary" information of Varian prior to their receipt by or disclosure to Distributor, subject to exception for legally required disclosures to the United States Government or other disclosures required by law, no shall Distributor use this information without the written consent of Varian for any reason other than performance of Distributor's obligations under this Agreement; and

(c) All documents, reports or information, including confidential or proprietary information, provided by Varian to Distributor shall be returned by Distributor to Varian upon Varian's request therefor after termination of this Agreement.

3. Obligations of Varian

During the Term, Varian will perform as follows:

3.1 Sale of Products

Varian will sell Products to Distributor at the prices and under the other terms of this Agreement.

3.2 Sales Technical Service Support

Varian will provide to Distributor reasonable ongoing sales, marketing and qualified technical service support regarding sales, installation, use or maintenance of Products.

3.3 Product Literature

Varian will provide to Distributor, at Distributor's request, reasonable quantities of Varian's standard product literature.

3.4 Confidential Information of Distributor

Varian will protect the confidentiality of Distributor's confidential information as follows:

(a) All information and data concerning Distributor's sales, customers, inventories, and business which Distributor has submitted to Varian, either before or after the execution of this Agreement, shall remain the property of Distributor;

(b) Varian will not disclose to third parties without the written consent of distributor, any of Distributor's documents, information, or data relating to its sales, customers, inventories, or business, including but not limited to the reports referred to in section 2.5 hereof or any similar reports heretofore provided to Varian, including but not limited to such documents, information and data which are specifically identified and marked "Confidential" or "Proprietary" information of Distributor prior to their receipt by or disclosure to Varian, subject to exception for legally required disclosures to the United States Government or other disclosures required by law, nor shall Varian use these documents, information or data without the written consent of Distributor for any reason other than performance of Varian's obligations under this Agreement; and

(c) All documents, reports, data, or information, including but not limited to confidential or proprietary information, provided by Distributor to Varian shall be returned by Varian to Distributor upon Distributor's request therefor after termination of this Agreement.

3.5 Stocking Levels

Varian will recommend from time to time, at its sole discretion, stocking levels of Products to be maintained by Distributor.

3.6 Reports

Varian will prepare quarterly reports of its sales to Distributor Accounts in the EC. These reports shall be delivered to Distributor within thirty (30) days of the end of each quarter.

4. Terms and Conditions

Varians's sale of Products, parts and services to Distributor shall be only by purchase orders from Distributor to Varian for delivery pursuant to schedules agreed to by the parties, but in no event longer than twelve (12) months after the order date, and subject to Varian's then current standard terms

and conditions of sale, the current version of which as of the Effective Date is attached as Exhibit D hereto. Varian may amend or modify its standard terms and conditions of sale at any time upon written notice thereof to Distributor. Any such amendment shall become effective thirty (30) days following transmittal of such notice of amendment or such other date which is mutually agreed upon by Varian and Distributor. In the event of any conflict between the terms of this agreement and Varian's standard terms and conditions of sale, the provisions of this Agreement shall control. Varian's standard terms and conditions of sale shall also include the Operating Hazards Warning Sheet included with each product. No other terms and conditions of sale (including, but not limited to those preprinted upon Varian's or Distributor's quotation, order acknowledgement, purchase order, invoice or statement forms) shall apply to any sale of Products pursuant to this Agreement. Acceptance of any orders placed by Distributor to Varian, either by written acknowledgement or by shipment of Products, does not constitute acceptance by Varian of any terms and conditions of sale or purchase other than those set forth in Exhibit D hereto or any amendment or changed version thereof.

5. Price and Delivery

Pricing and delivery of Products shall be as follows:

5.1 Prices and Price Protection

Prices for Products sold to Distributor during the Term shall be at the firm prices stated in Exhibit E (or any amended version thereof) or at Varian's lowest price to other distributors, including Stocking Distributors and Direct Accounts with respect to purchases made for purposes of resale (other than as a component part of tube-using equipment).

a. In the event that Varian violates the provisions of this section 5.1, Varian shall credit Distributor, with respect to each such sale, an amount equal to the difference between the lower price charged to any such other purchaser and the higher price charged to Distributor for the same Product within 120 days of the date that such lower price was charged to such other purchaser.

b. All prices for Products are in U.S. dollars, F.O.B. place of manufacture. Distributor shall have the sole right to determine and set its prices to its customers for the sale of Products.

c. Prices listed on Exhibit E hereto do not include sales, use, excise, or similar taxes. The amount of any present, retroactive, or future sales, use, excise or similar tax applicable to Distributor's purchase of Products will be added to the Varian invoice and paid by Distributor unless Distributor provides Varian with tax exemption certificates acceptable to Varian and the appropriate taxing authorities.

5.2 Price Changes

Subject to the provisions of section 5.1, prices for Products and other terms and conditions of sale may be changed by Varian at any time upon thirty (30) days prior written notice to Distributor, but no such change will be effective as to any order received by Varian from distributor before the effective date of the change.

5.3 Invoices, Risk of Loss and Payment

Varian shall mail invoices and all shipping notices, bills of lading and receipts, after each shipment of Products to Distributor. Risk of loss or damage shall pass to Distributor upon Varian's release of Products to the shipping agent or carrier for shipment to Distributor or to such destination specified by Distributor. All invoices are due and payable upon receipt and must be paid no later than thirty (30) days after transmittal to Distributor except in the event of a bona fide dispute with respect to the invoice or a portion thereof. In the event of any such billing dispute, the parties shall cooperate (pursuant to section 12.7 hereof) to resolve such dispute expeditiously, and Distributor shall promptly pay any remaining unpaid invoice amount in accordance with such resolution.

5.4 Credit

Varian, at its sole discretion, may change or limit the amount or duration of credit extended to Distributor. In addition to any other remedies available to Varian under this Agreement or under applicable law, Varian may cancel any orders accepted by Varian or delay the shipment of orders if Distributor fails to pay any invoice within thirty (30) days after its transmittal to Distributor except to the extent that the invoice or a portion thereof is in dispute. Notwithstanding the preceding sentence, Varian shall not cancel or delay shipment of any order from Distributor without allowing Distributor to agree to pay for Products C.O.D.

5.5 Product Discontinuance

Varian may discontinue its production or sale of any Products at any time during the Term of this Agreement upon giving Distributor at least one hundred eighty (180) days written notice of such discontinuance, unless sooner discontinuance without notice is required by a health, safety or environmental risk. Notwithstanding any such discontinuance, Varian will fill any order for a reasonable quantity of such discontinued Product(s) placed by Distributor prior to the expiration of the 180-day notice period provided for herein.

5.6 Restocking Charge

Varian may, in its sole discretion, from time to time agree to accept the return of selected items of Distributor's unused stock of Products, for credit to Distributor's account only, subject to Distributor's prepayment of restocking charges. Varian may amend or discontinue some or all of these restocking arrangements at any time upon written notice to Distributor.

5.7 Delivery

Delivery of Product shall be as agreed to by Varian and Distributor with respect to each specific order or, in the event of the parties' failure to agree, Varian shall use commercially reasonable efforts to complete delivery within 120 days of the date of the order In the event that Varian shall not have sufficient supply to meet its delivery obligations with respect to all orders from Stocking Distributors and Varian's sales to Direct Accounts, delivery of Product shall be apportioned among all pending orders as permitted by law, provided, however, that orders for actual sale or resale of Product to customers shall be filled before orders for inventory purposes. In such circumstances, priority among orders for actual sale or resale of Product to customers shall be established according to the respective date on which Varian received such orders, but in the event that Varian has insufficient supply to make delivery on such orders received on the same date, it shall make deliveries *pro rata* on orders received on that date. In connection with establishing priorities under this section 5.7, Varian shall not curtail scheduled deliveries to Distributor before (a) giving Distributor notice of such potential curtailment, to the extent possible under the circumstances which gave rise to the curtailment, and (b) Distributor has had a reasonable time within which to establish that it has commitments from its customers which entitle it to priority over orders for inventory purposes.

6. Warranty

6.1 Varian warrants that Products are free of defects in material and manufacture at the time of shipment pursuant to the warranty terms set forth in Exhibit F hereto and any standard

additional performance and specification warranties and different warranty periods as stated on individual Product warranty documents. Varian's entire liability and Distributor's exclusive remedy under these warranties shall be either to promptly replace defective units at no charge or cost to Distributor, or, at Varian's option, to refund the actual or *pro rata* purchase price paid by Distributor within a reasonable time after written notification of the defect and return of the defective Product to Varian. Costs of returning an item to Varian for replacement shall be paid by Distributor.

6.2 The warranty stated in section 6.1 above is made in lieu of all other warranties, express or implied, including but not limited to the implied warranties of merchantability, fitness for particular purpose, and any warranty arising out of a course of dealing or of performance, custom or usage of trade, except warranties of title and against patent infringement.

6.3 If Distributor offers express or implied warranties and limited remedies to Distributor's customers which differ from those stated above, Distributor will assume full responsibility for all liability, loss, cost, and expense arising out of, or in connection with, the different warranties and/or remedies offered by Distributor, and will defend and indemnify Varian for any costs of suit or liability arising therefrom.

6.4 Varian has no obligation under the warranty stated in section 6.1 with respect to Products that have been modified or damaged through misuse, abuse, accident, neglect, or mishandling by Distributor, or Distributor's customers, agents, servants or others.

7. Intellectual Property Rights

If any claim or demand is made, or action is brought, against Distributor, or any owner or user of Products sold or distributed by Distributor in any country, for any actual or alleged infringement or use of letters patent, registered designs, copyrights or proprietary information arising out of the manufacture, use, sale or disposal of Products or any part thereof supplied by Varian, Varian shall indemnify, defend and hold Distributor and subsequent purchasers harmless with respect to such claim, demands or actions, except to the extent such items are manufactured by Varian in compliance with Distributor's designs and stated requirements for specific structure. Distributor agrees that to the extent permitted by contract between Distributor and owners or users of Products, Varian may at its own election and expense either:

(a) Procure for Distributor, owners and users of Products the right to continue using the Products or the part thereof in question, or

(b) Modify the Products or such part so that they become non-infringing, or

(c) Replace Products or such part with non-infringing products or parts, or

(d) If the choices above are not available on reasonable terms, Varian may repurchase Products upon giving notice in writing to Distributor and such owners or users.

Varian and Distributor shall each give the other prompt notice of any infringement claim it receives related to Products.

8. Product Liability

Varian shall be responsible for product liability claims of third parties to the extent proximately caused by the fault or neglect of Varian, its employees or agents. Distributor shall be responsible for the product liability claims of third parties to the extent proximately caused by the fault or neglect of Distributor, its employees or agents. Each party to this Agreement shall give the other prompt notice of any liability claim, suit or demand related to Products and which involves such party's manufacture, sale, delivery, service or other activities relating to Products.

9. Termination

9.1 At-Will Termination

In the event that either party wishes to terminate this Agreement at any time or in any manner other than in accordance with the provisions of sections 9.2, 9.3 or 9.4 hereof, then, in such event, this Agreement shall terminate three (3) years after both of the following conditions are satisfied:

(a) Written notice of such termination is given pursuant to the procedures set forth in section 11 hereof, and

(b) The terminating party makes good and full payment to the non-terminating party of an amount equal to one and one-half (1.5) times Distributor's total sales of Products during the twelve (12) month period ending on the last day of the second full month immediately preceding the date of the written notice of termination as for liquidated damages occasioned by such termination. In no event, however, shall the amount payable under this section 9.1(b) exceed Twenty-Five Million Dollars ($25,000,000).

The parties stipulate and agree that the amount specified in the preceding sentence represents a reasonable and fair estimate of the loss to be suffered by the non-terminating party in such circumstances. This provision is in lieu of any legal, equitable, and statutory rights the non-terminating party may have for termination, but this provision shall not relieve either of the parties of its respective obligations under this Agreement during the three-year termination period. The parties hereto may elect to waive this liquidated damage provision by mutual written consent.

9.2 Breach

In the event that either party shall materially breach any of the terms, conditions or obligations of this Agreement which are to be observed and performed by such party, the non-breaching party may terminate this Agreement at its sole election. A material breach shall be deemed to have occurred upon the election of the non-breaching party to terminate the Agreement following sixty (60) days written notice of such breach and the failure of the breaching party to remedy the breach within such sixty (60) day period. Such election to terminate shall be in writing and shall be given by the non-breaching party to the breaching party within 120 days following the expiration of the 60-day notice and cure period provided for above.

For purposes of this Agreement, a material breach shall be:

(a) Assignment by either party of its rights and obligations under this Agreement without the written consent of the other party as required by section 12.2 hereof.

(b) Material failure of either party to fulfill a material obligation under this Agreement after having previously received notice of its breach of that obligation and its failure to cure such breach.

(c) Failure to pay any amount due pursuant to the provisions of sections 1.5, 1.7 or 5.1 hereof.

(d) Distributor's failure to maintain minimum inventory levels as required by section 2.7 hereof.

(e) Varian's failure to enforce in its agreements with other Stocking Distributors the same minimum inventory levels required of Distributor in accordance with section 2.7 hereof.

(f) Varian's failure to deliver Product as required under section 5.7 of this Agreement.

(g) Distributor's failure to make payment when due for Products purchased from Varian pursuant to this Agreement, except to the extent of a bona fide billing dispute or disagreement between Distributor and

Varian as described, and subject to the obligations set forth, in section 5.3 hereof.

(h) Distributor's sale of all or substantially all of its assets which relate to the distribution of Products without the prior written consent of Varian, which consent shall not be unreasonably withheld or delayed.

(i) Varian's sale of all or substantially all of its assets which relate to the manufacture of Products without the prior written consent of Distributor, which consent shall not be unreasonably withheld or delayed.

In the event of an Intentional Material Breach (as hereafter defined) of this Agreement, then, upon the non-breaching party's election to terminate this Agreement, as provided in this section 9.2, there shall be due and owing from the breaching party to the non-breaching party, and the breaching party shall make good and full payment to the non-breaching party of, an amount equal to one and one-half (1.5) times Distributor's sales during the twelve (12) month period ending on the last day of the second full month immediately preceding the date of the written notice of breach as and for liquidated damages occasioned by such breach and termination. In no event, however, shall the amount payable under this section 9.2 exceed Twenty-Five Million Dollars ($25,000,000). The parties stipulate and agree that the foregoing amount represents a reasonable and fair estimate of the loss to be suffered by the non-breaching party in such circumstances. This provision is in lieu of any legal, equitable, and statutory rights the non-breaching party may have for breach and termination, but this provision shall not relieve either of the parties of its respective obligations under this Agreement until the effective date of such termination. The parties hereto may elect to waive this liquidated damage provision by mutual written consent.

In the event of termination under this section 9.2, the non-breaching party may, in its sole discretion, elect to defer the effective date of such termination by a period of up to thirty-six (36) months from the date of its written election to termination hereunder. Any such election to defer the effective date of termination shall have no effect upon the breaching party's obligation to make any payment required by the immediately preceding paragraph according to its terms.

For purposes of this section 9.2, an "Intentional Material Breach" shall be any material breach found by a duly selected panel of arbitrators (pursuant to section 12.7(c) hereof) to have been committed by the breaching party with the predominant intent of avoiding liability for the payment it would be required to make due to an at-will termination (pursuant to section 9.1 hereof).

If, in the event of any material breach, the non-breaching party elects not to terminate this Agreement, the non-breaching party shall nonetheless retain and have all rights to pursue any other legal, equitable, and statutory remedies (other than termination of this Agreement) it may have for such breach.

In the event of any non-material breach, the non-breaching party shall have all rights to pursue any legal, equitable, and statutory remedies (other than termination of this Agreement) it may have for such breach.

9.3 Force Majeure

In the event of the occurrence of a force majeure event or events as defined in and pursuant to the terms of section 12.1 herein, either party may cancel this Agreement pursuant to the terms of section 12.1 upon thirty (30) days written notice and in accordance with the provisions of section 12.1 hereof.

9.4 Insolvency

In the event that either of the following events ("Event of Insolvency") occurs with respect to a party, the other party may terminate this Agreement, at its sole election and without prejudice to any of its other legal and equitable rights and remedies, upon sixty (60) days written notice of its intention to do so unless the Event of Insolvency is removed within such sixty (60) day period:

(a) an application for protection, adjudication of bankruptcy or insolvency, order of liquidation or order approving a plan of liquidation or reorganization pursuant to or under any bankruptcy or insolvency law; or

(b) the commission or appointment of a receiver for the business or property of the party or its making of any general assignment for the benefit of its creditors.

9.5 Effect of Termination

Upon the effective date of termination of this Agreement by either party:

(a) Distributor shall immediately cease to represent itself as an authorized distributor of Varian with respect to Products, and all rights and restrictions of or on either party hereunder shall cease except as to:

(i) Claims arising prior to the effective date of termination;

(ii) Liability for liquidated damages as provided in sections 9.1 and 9.2; and

(iii) Rights or obligations of a continuing nature such as those set forth in sections 1.8 (Scope of Authority (with respect to the consented-to use of Trademarks)), 2.9 (Confidential Information of Varian), 3.4 (Confidential Information of Distributor), 6 (Warranty), 7 (Intellectual Property Rights), 8 (Product Liability), and 10 (Limitation of Liability).

(b) Except for use a party may make of the other party's Trademarks and corporate logo in the sale of Product which such first party owns, as set forth in section 1.8 hereof, each party shall immediately cease use of the other party's Trademarks and corporate logo and take all reasonable action to cause the removal within a reasonable time of the other party's Trademarks and corporate logo from all signs, directories, business cards, sales literature, advertisements and any other places where used by the party.

(c) Such termination shall not affect obligations with respect to events or actions taking place or omitted before the effective date of termination.

10. Limitation of Liability

10.1 Neither Varian nor distributor shall be liable to the other for any special, incidental, punitive, or consequential damages (including, but not limited to loss of profits, revenue or business) resulting from or in any way related to products, any of distributor's purchase orders, this agreement, or the termination of this agreement, except to the extent represented by amounts owing pursuant to sections 1.5, 1.7, 5.1, 9.1, and 9.2 hereof. This limitation applies regardless of whether the damages or other relief are sought based on breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal or equitable theory.

10.2 Any action for any breach of obligation under this Agreement must be commenced within one (1) year after the non-breaching party discovers the breach, provided, however, that any claim for breach of warranty may be commenced at any time permitted by the applicable warranty.

11. Notices

11.1 Method

All notices and elections ("Notices") required or permitted by this Agreement must be in writing and sent by certified or express mail, with return receipt requested, Federal Express or other overnight services, or facsimile transmission. The date of Notice is deemed to be the date it is sent or transmitted.

11.2 Party to Receive Notice

Distributor shall send all Notices to Varian under this Agreement to:

Marketing Manager, Varian Power Grid & X-Ray Tube Products
(If by mail, Federal Express or other overnight service:)
301 Industrial Way, San Carlos, California 94070
If by facsimile transmission:
(415) 592-9988
With separate copies to:
Vice President and General Manager, Varian Power Grid & X-Ray Tube Products
(If by mail, Federal Express or other overnight service:)
1678 South Pioneer Road,
Salt Lake City, Utah 84104
(If by facsimile transmission:)
(801) 973-5089
Varian Associates, Inc., Attention: General Counsel
(If by mail, Federal Express or other overnight service:)
3050 Hansen Way, Palo Alto, CA 94304
(If by facsimile transmission:)
415-424-5998

Varian shall send all notices to Distributor under this Agreement to:

Richardson Electronics, Ltd., Attention: President
(If by mail, Federal Express or other overnight service:)
40W267 Keslinger Road, LaFox, Illinois 60147
(If by facsimile transmission:)
708-208-2950
With a separate copy to:
Richardson Electronics, Ltd., Attention: General Counsel
(If by mail, Federal Express or other overnight service:)
40W267 Keslinger Road, LaFox, Illinois 60147
If by facsimile transmission:)
708-208-2950

11.3 Change

By notice as stated above, a party may designate in writing other individuals to receive notice on its behalf and may change the address or facsimile transmission number of any individual who is to receive notice on its behalf.

12. General Terms

12.1 Force Majeure

Neither party shall be liable for any delay or failure to perform its obligations under this Agreement to the extent that such delay or failure arises from circumstances beyond its control, including but not limited to, acts of God, war, riot or civil commotion, industrial dispute, fire, flood, drought, or act of government. Each party shall keep the other fully informed of any such circumstances, and performance by the party so affected of its obligations hereunder shall be suspended during the existence of such circumstances, provided, however, that if (a) such suspension has exceeded two hundred twenty-five (225) days and (b) the suspension affects more than 50% of the business transacted under this Agreement, then the other party has the right to terminate this Agreement by written notice, as provided in section 9.3, to the party so affected. For purposes of the preceding sentence, in calculating whether a suspension affects more than 50% of the business transacted under this Agreement, there shall be excluded from such calculation any diminution in business resulting from the operation of the provisions of section 12.8 hereof.

12.2 Assignment

Except for the purchase of parts, assemblies and supplies, neither Distributor nor Varian may assign or subcontract this Agreement without the prior written consent of the other party which consent shall not be unreasonably withheld. Any assignment without such written consent shall be void and shall entitle the nonassigning party to terminate the Agreement. Claims for moneys due or to become due hereunder may be assigned by Varian, provided Distributor is given copies of such assignment.

12.3 Inspection of Books and Records

Each party shall have the right to have auditors (which, at the election of either party, shall be outside auditors) inspect semiannually, during normal business hours, those historic books, records, and financial statements of the other party needed to verify and compute amounts that may be due under sections 1.5, 1.7, 3.6, and 5.1 hereof. All information inspected pursuant to this section 12.3 shall be used only to the extent necessary to enforce the parties' respective rights under this Agreement.

12.4 Most Favored Nation

Notwithstanding any other provision of this Agreement, if Varian chooses to offer to any distributor, including Stocking Distributors and Direct Accounts with respect to purchases made for purposes of resale (other than as a component part of tube-using equipment), terms or conditions (other than price) in a distribution or similar agreement, or otherwise in connection with the sale or return of Product, that are more favorable to such Stocking Distributor or Direct Account than to Distributor under this Agreement, then such more favorable terms and conditions shall be accorded immediately and unconditionally to Distributor. The rights, benefits and remedies granted by this section 12.4 are in addition to, and not in limitation of, all other rights, benefits and remedies of Distributor under this Agreement and they may be exercised independently of, or concurrently with, any or all such other rights, benefits and remedies.

12.5 Sole Understanding

This Agreement and the Exhibits hereto are the entire and sole understanding of the parties with respect to the subject matter and supersedes all other prior agreements, understandings and communications, whether oral or written, including without limitation the Joint Venture Agreement, dated February 26, 1986 (with exhibits and related agreements), which Agreement shall terminate on the Effective Date without penalties, claims, damages, or rights of either party. This agreement is intended to be a final, complete and exclusive statement of all the terms and conditions of the business transaction which is the subject of this agreement. This Agreement may be amended only by a writing signed by authorized representatives of both parties. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective, subsidiaries, divisions, and affiliates.

12.6 Waiver

Any waiver on the part of either party of any breach or right or interest hereunder shall not imply the waiver of any subsequent breach or waiver or any other right or interest. A course of dealing or performance does not effect a modification or a waiver.

12.7 Disputes

(a) Governing Law, Jurisdiction and Venue

The validity, interpretation, and effect of this Agreement shall be construed in accordance with and governed by the substantive law of the State of California, without, regard or reference to other laws or rules of conflicts of laws, except that this Agreement shall be given a fair and reasonable construction in accordance with the intention of the parties and without regard to, or aid of, Section 1654 of the California Civil Code which provides that in cases of uncertainty, the language of a contract should be interpreted against the party who caused the uncertainty to exist.

(b) Discussion

Any dispute, controversy, or claim arising out of this Agreement or agreements regarding its performance shall be settled by an amicable effort on the part of both parties to the Agreement. An attempt to arrive at a settlement shall be deemed to have failed thirty (30) days after either Varian or Distributor so notifies the other party in writing, and neither party shall institute arbitration or any related proceeding until thirty (30) days after such written notice of failure to resolve the dispute has been provided to the other party.

(c) Arbitration

If an attempt at settlement has failed and written notice thereof has been given as provided herein, any dispute, controversy or claim between the parties arising out of or in connection with this Agreement (or any subsequent agreements or amendments thereto), including, but not limited to, its conclusion, existence, validity, interpretation, performance or non-performance, breach, termination, damages including claims in tort, whether arising before or after the termination of the Agreement, shall be settled by binding arbitration pursuant to the Commercial Arbitration Rules, as amended and in effect January 1, 1991, of the American Arbitration Association (the "Rules"), subject to the following:

(i) If the arbitration is commenced by Distributor, the arbitration panel shall have its seat in the County of Santa Clara, California; if the arbitration is commenced by Varian, the arbitration panel shall have its seat in Chicago, Illinois.

(ii) Distributor shall be entitled to designate one arbitrator and Varian shall be entitled to designate one arbitrator. Within thirty (30) days after receipt by a party of a written notice of arbitration, each party shall notify the other party of its designated arbitrator. The arbitrators so chosen shall designate a third neutral arbitrator by unanimous vote within thirty (30) days of their designation. That neutral arbitrator shall act as Chair to the arbitration.

In the event that a neutral arbitrator is not designated pursuant to this subsection within sixty (60) days after receipt by a party of a written notice of arbitration, either party may request that the American Arbitration Association select such neutral arbitrator under its normal procedures; provided, however, that such neutral arbitrator selected by the American Arbitration Association shall be a member of both the American Board of Trial Advocates and the American College of Trial Lawyers.

Neither party shall have any ex parte contact with any of the arbitrators after designation of the neutral arbitrator. If a designated arbitrator cannot for any reason continue to serve as an arbitrator, then the party which so designated that arbitrator shall have the right to appoint a replacement for that arbitrator.

(iii) The arbitration shall be conducted in accordance with the procedural laws of the Federal Arbitration Act, to the extent not inconsistent with the Rules or this section 12.7(c).

(iv) An arbitration hearing shall be conducted not later than 180 days after selection of the neutral arbitrator. At the arbitration hearing, each party may make written and oral presentations to the arbitration panel, present testimony and written evidence, and examine witnesses.

(v) The final written decision of the arbitration panel shall be final and binding, and may be entered and enforced in any court of competent jurisdiction over the parties thereto.

(vi) Each party to the arbitration shall pay the fees and expenses of the arbitrator it designates and one-half of the fees and expenses of the neutral arbitrator and of the American Arbitration Association.

12.8 Severability

If any one or more of the provisions, or a portion of any such provision, of this Agreement (including any attachments hereto) shall be deemed to be contrary to law, invalid, illegal or unenforceable in any respect by any governmental commission, government organization or court of law having competent jurisdiction over the subject matter and the parties hereto, then (a) the remaining provisions shall be severable and enforceable in such jurisdiction in accordance with their terms, and (b) all provisions of this Agreement shall remain enforceable in all other jurisdictions in which no such finding of invalidity, illegality, or unenforceability has been made.

Should any provision of this Agreement be specifically challenged by any governmental entity under any antitrust or other competition law of any jurisdiction, then the parties shall cooperate in, and bear equally the costs of, defending against such challenge, and any such challenged provision may be suspended to the extent necessary by either party pending resolution of such challenge if the continuation of such provision would, in the good faith opinion of such party, likely expose that party to criminal charges or substantial incremental financial liability. In the event of any such suspension of a challenged provision, the remaining provisions of this Agreement shall be severable and enforceable in such jurisdiction in accordance with their terms, and all provisions of this Agreement shall remain enforceable in all other jurisdictions in which no such challenge has been made.

It is the express intent of the parties that, in the event that a provision or portion of this Agreement is deemed invalid, illegal or unenforceable, or is challenged as aforesaid, the Agreement shall continue and the parties shall make whatever reasonable adjustments in their arrangements, if any are required, as may be mutually fair in light of their original intent as reflected in this Agreement.

12.9 Third Parties

Nothing in this Agreement is intended to confer any rights on any persons other than the parties to this Agreement, nor shall any provision hereof give any third persons any rights against any party to this Agreement. The parties acknowledge, however, that each of them has divisions and subsidiaries through which they operate, and the parties agree that they may fulfill their obligations and exercise their rights under this Agreement by or through any such division or subsidiary.

12.10 Headings

The headings of sections used in this Agreement are for convenience only and shall not be used to construe or interpret this Agreement in any manner contrary to the meaning of the provisions hereof.

In Witness Whereof, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

Richardson Electronics, Ltd.
("Distributor")
Varian Associates, Inc.
("Varian")
Edward J. Richardson,
Chairman and President.
Date executed: August 8, 1991.
Al Wilunowski,
Executive Vice President.
Date executed: August 8, 1991.

[FR Doc. 91-24848 Filed 10-16-91; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 11, 1991, Abbott Laboratories, Attn: D–209, Abbott Park, Abbott Park, Illinois 60064–3500, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance benzoylecgonine (9187).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 18, 1991.

Dated: October 8, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–24932 Filed 10–16–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 24, 1991, Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
N-ethylamphletamine (1475)	I
cis-4-Methylaminorex (1590)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-methylenedioxyamphetamine (MDA) (7400)	I
N-hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-methylenedioxy-N-ethylemphetamine (7404)	I
3,4-methylenedioxymethamphetamine (MDMA) (7405)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethlyamine analog of phencyclidine (7455)	I
Pyrrolidine analog of phencyclidine (7458)	I
Thiophene analog of phencyclidine (7470)	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-piperidinocyclohexane-carbonitrile (PCC) (8603)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 18, 1991.

Dated: October 8, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–24933 Filed 10–16–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 24, 1991, CIBA-GEIGY Corporation, Pharmaceuticals Division, Regulatory Compliance SEF 1030, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance methylphenidate (1724).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing theron in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CFR), and must be filed no later than November 18, 1990.

Dated: October 8, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–24934 Filed 10–16–91; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedules I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 23, 1991, Wildlife Laboratories, Inc., 1401 Duff Drive, suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of Carfentanil (9743) a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Adminstrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 18, 1991.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c) (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Dated: October 8, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–24935 Filed 10–16–91; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by November 18, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Dee Harris, National Endowment for the Arts, International Activities Office, room 528, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5422) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 92 International Projects Initiative

Frequency of Collection: One time

Respondents: State or local governments; Non-profit institutions

Use: Discretionary grants program announcement and applications elicit relevant information from non-profit organizations and state, regional or local arts agencies that apply for funding under the International Projects Initiative category. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 200

Average Burden Hours per Response: 24

Total Estimated Burden: 4,800

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 91–24985 Filed 10–16–91; 8:45 am]

BILLING CODE 7537–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by November 18, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401)

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93 Music Presenters and Festivals Application Guidelines

Frequency of Collection: One Time

Respondents: State or local governments; Non-profit institutions

Use: Guideline instructions and applications elicit relevant information from non-profit organizations and state or local arts agencies that apply for funding under specific Music categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 350

Average Burden Hours per Response: 39.57

Total Estimated Burden: 13,850

Judith E. O'Brien

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 91–24986 Filed 10–16–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Application Received Under the Antaractic Conservation Act of 1978, PL 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 18, 1991. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. *Applicant*

Natalie P. Goodall, Sarmiento 44, 9410 Ushuaia, Tierra del Fuego, Argentina

Activity for Which Permit Requested

Taking. The applicant requests permission to take by salvage dead specimens of birds or mammals for the purpose of scientific study.

Location

Antaractic peninsula area

Dates

November 1991–June 1993

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91–24978 Filed 10–16–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–213, 50–245, 50–336 and 50–423]

Connecticut Yankee Atomic Power Co.; et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 70.24(a) to Connecticut Yankee Power Company and the Northeast Nuclear Energy Company, et al. (the licensee) for the Haddam Neck Plant and for the Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3 located at the licensee's sites in Middlesex County, Connecticut and New London County, Connecticut respectively.

Environmental Assessment

Identification of Proposed Action:

The proposed action would allow an exemption from the requirements of 10 CFR 70.24(a) for the operation of the Haddam Neck Plant and Millstone, Unit Nos. 1, 2 and 3 in response to the licensee's request dated March 12, 1991 and supplemented by letter of August 6, 1991.

The Need for the Proposed Action:

The exemption from 10 CFR 70.24(a) would allow irradiated or unirradiated fuel assemblies to be handled and stored in the Haddam Neck Plant and Millstone, Unit Nos. 1, 2 and 3 reactor vessels and fuel handling buildings without having monitoring systems which will energize clearly audible alarms if accidental criticality occurs. The proposed exemption is needed to permit refueling operations at the Haddam Neck Plant and Millstone, Unit Nos. 1, 2 and 3 without the criticality monitoring systems specified by 10 CFR 70.24(a).

Environmental Impacts of the Proposed Action:

There are no environmental impacts of the proposed action. Inadvertent or accidental criticality in the reactor vessel will be precluded through compliance with the facilities' technical specifications and the operators' continous attention directed toward instruments monitoring behavior of the nuclear fuel and procedural controls during refueling. Inadvertent or accidental criticality in the spent fuel pools and in the new fuel vaults is precluded by the design of these areas such that the fuel is stored in a geometric array that precludes criticality and by technical specification limits on Keff. Since these measures provides assurance that criticality will not occur during receipt, inspection, use, and handling and storage of fuel, this is an acceptable alternative to a monitoring system. Since the proposed exemption does not otherwise affect radiological plant effluents nor cause any significant occupational exposures, the Commission concludes that there are no radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR part 20. The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action:

The Commission has concluded that there are no measurable environmental impacts associated with the proposed exemption. The principal alternative would be for the Commission to deny the requested exemption. This would not reduce the environmental impacts of the plant operation.

Alternative Use of Resources:

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of Haddam Neck Plant and Millstone, Unit Nos. 1, 2 and 3 dated October 1973 for Haddam Neck, June 1973 for Millstone, Units 1 and 2 and December 1984 for Millstone, Unit 3.

Agencies and Persons Consulted:

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for exemption dated March 12, 1991, as supplemented August 6, 1991. A copy is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms located at the Learning Resources Center, Thames

Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360 and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Rockville, Maryland, this 9th day of October 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–25045 Filed 10–16–91; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems of postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–8003 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 1 to Regulatory Guide 8.25, "Air Sampling in the Workplace." This guide is being developed to provide guidance on air sampling in restricted areas of the workplace.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. Comments will be most helpful if received by December 27, 1991.

Although a time limit is given for comments on this draft, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution Unit, Division of Freedom of Information and Publications Services, Office of Administration, Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 1st day of October 1991.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 91–25044 Filed 10–16–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–354]

Public Service Electric & Gas Co., Atlantic City Electric Co., Hope Creek Generating Station; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration, Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to Public Service Electric & Gas Company (PSE&G) and the Atlantic City Electric Company (the licensees) for operation of the Hope Creek Generating Station located in Lower Alloways Creek Township, Salem County, New Jersey.

The proposed amendment would separate the surveillance requirements (Surveillance 4.8.1.1.2.g) associated with the buried fuel oil transfer piping's cathodic protection system from those used to determine diesel generator operability.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PSE&G has, pursuant to 10 CFR 10.92, reviewed the proposed amendment to determine whether our request involves a significant hazards consideration. We have determined that operation of the Hope Creek Generating Station in accordance with the proposed changes:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design bases of the Diesel Generator (DG) fuel oil storage and transfer system require sufficient storage of fuel oil for seven days of continuous operation under design load conditions so that standby (onsite) electrical power is available during loss of offsite power (LOP) and/or design basis accident (DBA) events. The function of storing and supplying this amount of fuel oil is accomplished by each DG's respective fuel oil day tank, two fuel oil storage tanks, and two fuel oil transfer pumps. Operability of these components, including minimum allowable storage tank level, is specifically required by TS 3.8.1.1 and verified by TS Surveillances 4.8.1.1.2.a.1–3, b, c, d, f.1–3, h.12, j.1, and j.2.

2. Will Not create the possibility of a new or different kind of accident from any accident previously evaluated.

Neither the buried portion of the diesel fuel oil transfer piping nor the associated cathodic protection system is safety-related. Therefore, the proposed change does not adversely affect the design or operation of any system or component important to safety. No physical plant modifications or new operational configurations result from this change.

3. Will not involve a significant reduction in a margin of safety.

Credit for the capability to transfer fuel to the storage tanks is not taken in any analyzed event. Additionally, in the unlikely event that it becomes necessary to transfer oil to the storage tanks during a design basis event and the normal fill line serviced by the affected cathodic

protection system is not available, the emergency fill connection located in the diesel building can be used.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 18, 1991, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or othe interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The

Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Charles L. Miller, Director, Project Directorate I–2: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M.J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 10, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 10th day of October 1991.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–25047 Filed 10–16–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–445]

TU Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: License Amendment: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on October 9, 1991 (56 FR 50956). The action is necessary to correct the final date by which the licensee may file a request for a hearing.

On page 50957, in the second column, in the second line from the bottom, "November 7, 1991" should read "November 8, 1991".

Dated at Rockville, Maryland, this 10th day of October, 1991.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 91–25046 Filed 10–16–91; 8:45 am]

BILLING CODE 7590–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next meeting on Thursday and Friday, October 23–25, 1991, at the Sheraton City Centre, 1143 New Hampshire, NW., Washington, DC, 202–775–0800 in the City Centre ballroom. Thursday's meeting will begin at 9 a.m.; Friday's will begin at 10 a.m.

ADDRESSES: The Commission is located at 2120 L Street, NW., in suite 510, Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653/7220.

SUPPLEMENTARY INFORMATION: The topics to be discussed will include managed care in Medicaid, the relationship of Medicaid fees to private sector payments, HCFA's proposed revisions in the Medical Economic Index, malpractice reform, enforcement of balance billing limits, graduate medical education, and physician credentialing.

Information about the exact agenda can be obtained on Friday, October 18, 1991. Copies of the agenda can be mailed at that time. Please direct all requests for the agenda to the Commission's receptionist.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 91–25052 Filed 10–16–91; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29801; File No. 265–18]

Market Transactions Advisory Committee

ACTION: Notice of meeting of the Securities and Exchange Commission Market Transactions Advisory Committee.

SUMMARY: This is to give notice that the Securities and Exchange Commission Market Transactions Advisory Committee will meet on October 29, 1991, in room 1C30 at the Commission's main offices, 450 5th Street NW., Washington, DC, beginning at 10 a.m. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Jonathan Kallman, Division of Market Regulation (202) 272–2402, or Jerry Carpenter, Division of Market Regulation (202) 272–7470.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app 10a, the Securities and Exchange Commission Market Transactions Advisory Committee ("Advisory Committee") hereby gives notice that it will meet on October 29, 1991, in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 10 a.m. the meeting will be open to the public.

The Advisory Committee was formed under section 17A(f) of the Securities Exchange Act of 1934. The Advisory Committee's responsibilities include assisting the Commission in identifying State and Federal laws that may impede the safe and efficient clearance and settlement of securities transactions and advising the Commission on whether and how to use its authority, under the Market Reform Act of 1990, to adopt in certain circumstances uniform Federal rules regarding the transfer and pledge of securities.

This will be the first meeting of the Advisory Committee. The purpose of the meeting will be to review the objectives and responsibilities of the Advisory Committee and to establish plans for the orderly progression of the Advisory Committee's work. The Advisory Committee will consider what areas of existing State and Federal law it should review and with what priority. The Advisory Committee will consider and discuss the status of the project to redraft article eight of the Uniform Commercial Code undertaken by the National Conference of Commissioners on Uniform State Laws and the status of progress by the U.S. Group of Thirty

Working Committee on the Group of Thirty's recommendations.

Dated: October 9, 1991.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 91-25008 Filed 10-16-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29803; File No. SR-Amex-91-21]

October 10, 1991.

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, Relating to Increasing the Size of Orders in Major Market Index and LT-20 Index Options That Are Eligible for Automatic Execution Through AUTO-EX.

I. Introduction

On August 26, 1991, the American Stock Exchange, Inc ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to increase from 20 to 50 contracts, the size of the orders for Major Market Index ("XMI") options, and from 20 to 100 contracts, the size of the orders for LT-20 Index ("LT-20") options that are eligible for execution through the Exchange's automated execution system ("AUTO-EX").

The proposed rule change was published for comment in Securities Exchange Act Release No. 29703 (September 18, 1991), 56 FR 48256 (September 24, 1991). No comments were received on the proposed rule change.[3]

II. Description of AUTO-EX

In December 1985, the Amex implemented a pilot program to initiate the AUTO-EX system for the automatic execution of customer orders in XMI options.[4] Since that time, AUTO-EX has been expanded to include all equity and stock index options traded on the Amex.[5] AUTO-EX is an automated system that executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Automatic Amex Options Switch ("AMOS") system.[6]

Each specialist in an AUTO-EX eligible option is automatically signed on to the system from the moment the system is activated and remains a participant until the system is turned off. Registered Options Traders ("ROTs") participate on the system on a voluntary basis. Prior to signing on to the AUTO-EX system, however, ROTs must sign an agreement with the Exchange undertaking to satisfy the following requirements prior to and during their participation on the system. First, the ROT must be in good standing at the Amex. Second, the ROT must have the written concurrence of his or her clearing firm to participate on the system. Third, once signed on to the system for a particular option class, the ROT must remain in the trading crowd for that option. The ROT may, however, sign on to one additional AUTO-EX option class so long as the ROT can be considered in the crowd for both options. Fourth, the ROT may sign on the system at any time during the day, but only may sign off and back on to the system one additional time during the day. Fifth, while signed on to the system in a particular option class, the ROT may not place orders on the specialist's book for that option. Sixth, the ROT must accept Exchange-mandated price adjustments when a trade is automatically executed at an incorrect price.

III. Description of the XMI and the LT-20.

The XMI is a price-weighted, broad market index based on the stocks of 20 highly capitalized companies. XMI options trading commenced on the Amex in April 1983.[7] The Amex disseminates updated values of the XMI at least once each minute. On October 8, 1991, the Commission approved an Amex proposal to reduce the value of the XMI to one-half its present value by doubling the divisor used in calculating the Index.[8]

The LT-20 is a broad market index which is computed at a fraction of the value of the XMI. Except for the reduced value given to the LT-20, all of the specifications and calculations for the Index are the same as those used for the XMI. Options on the LT-20 trade independently of and in addition to options on the XMI. Positions in XMI and LT-20 options are aggregated for position and exercise limit purposes. At the same time the Commission approved the reduction in the XMI's value, the Commission also approved a modification in the calculation of the LT-20 so that the Index now represents one-tenth, rather than one-twentieth, of the value of the reduced XMI.[9] This modification was made so that the value of the LT-20 Index remains the same despite the one-half reduction in the value of the XMI.

IV. Description of the Proposal

The current proposal increases AUTO-EX eligibility for XMI options from 20 to 50 contracts and for LT-20 options from 20 to 100 contracts. The proposal also increases AMOS eligibility for XMI options from 30 to 50 contracts and for LT-20 options from 30 to 100 contracts.

Under the proposal, each order for XMI and LT-20 options will be split into individual units of 10 contracts per unit.

Specialists and ROTs signed onto AUTO-EX will then be assigned 10 contracts per transaction. If, however, there are fewer market makers on AUTO-EX than the number of 10-contract units, those participants will receive additional 10-contract units until the entire order is filled. As described above, although participation on the AUTO-EX system for ROTs is voluntary, participation for Amex specialists is mandatory, therefore, absent an operational failure, orders entered into the AUTO-EX system will at all times be executed.

The Amex intends to implement the proposed increase in the AUTO-EX order eligibility size for XMI and LT-20

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] The proposal was amended on September 18, 1991, to increase, from 20 to 100 contracts, the size of the orders in LT-20 options that are eligible for automatic execution through AUTO-EX, and to increase, from 30 to 50 contracts and from 30 to 100 contracts, respectively, the size of the orders in XMI and LT-20 options that are eligible for automated order routing through the Exchange's automatic routing system, called "AMOS".

[4] The pilot was approved on a permanent basis in August 1966. See, Securities Exchange Act Release No. 23544 (August 20, 1986), 51 FR 30601 (August 27, 1986).

[5] See, e.g., Securities Exchange Act Release Nos. 25996 (August 15, 1988), 53 FR 31779 (August 19, 1988) and 23573 (February 28, 1986), 51 FR 31889 (September 5, 1986).

[6] AMOS is an electronic options order routing system which transmits market and marketable limit orders of up to 30 contracts in equity and stock index options and related administrative messages from member firms directly to the specialists on the Exchange floor via printers at each trading post. After arriving at the appropriate specialist's post, the order may, if eligible, be executed either automatically through AUTO-EX, or printed out and executed manually against an order on the book, the specialist as principal, or one or more brokers or traders in the crowd. Once an order is executed, AMOS transmits related execution reports directly back to the member firm.

[7] See Securities Exchange Act Release No. 19709 (April 27, 1983), 48 FR 20179.

[8] See Securities Exchange Release No. 29798 (October 8, 1991) (order approving file number SR-Amex-91-18) ("XMI Split Order").

[9] *Id.*

options in conjunction with its reduction of the XMI to one-half its present value and the modification of the calculation of the LT-20 to represent one-tenth the value of the reduced XMI. The Exchange believes that the implementation of these proposals will significantly help attract additional investor interest in XMI and LT-20 options, which, in turn, will provide better liquidity for public customers trading in XMI and LT-20 options.

V. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and section 11A.[10] The Commission believes that enhancing the AUTO-EX system to provide for the automatic execution of larger customer orders in XMI and LT-20 options will provide for more efficient handling and reporting of orders in XMI and LT-20 index options, thereby improving order processing and turnaround time.

The Commission also believes that increasing the AUTO-EX order eligibility size from 20 to 50 contracts for XMI options and from 20 to 100 contracts for LT-20 options can benefit the investing public by facilitating the execution of orders that have been routed through the Amex's AMOS system. The Commission believes that this increase in the number of contracts that can be executed through AUTO-EX enhances the Exchange's ability to process transactions expeditiously and effectively. Further, the Commission believes that increasing the size of orders eligible for execution through AUTO-EX should increase overall AUTO-EX order flow and extend the system's benefits, such as increased order routing efficiencies, to more Amex member firms and customers.

The Commission also believes that the expansion of the AMOS order eligibility size from 30 to 50 contracts for XMI options, and from 30 to 100 contracts for LT-20 options, is appropriate given the close operating relationship between the AUTO-EX and AMOS systems. Since the AUTO-EX automatic execution system interlocks with the AMOS automatic order routing system, the Exchange believes that the contract limit for both systems must be the same for these two systems to operate efficiently and effectively. Accordingly, the Commission believes it is consistent with the Act to expand the order routing capabilities of AMOS to accommodate the greater order execution efficiencies obtainable through the expansion of AUTO-EX.

Finally, the Commission believes, based on representations made by the Exchange, that increasing the size of the orders eligible for execution through AUTO-EX (and order routing through AMOS) for XMI and LT-20 options will not expose the Amex's options markets or equity markets to risk of failure or operational break-down. In particular, the Exchange represents that the AUTO-EX and AMOS systems will be able to handle the increased order volume that should accompany the expansion of the eligible order sizes for XMI and LT-20 options.[11]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** The Commission finds that accelerating approval of the Amex's proposal to increase the AUTO-EX order eligibility size from 20 to 50 contracts for XMI options and from 20 to 100 contracts for LT-20 options is necessary to permit this increase to be implemented in conjunction with the "split" in the XMI.[12] In doing so, the Commission believes the Amex will have a market structure in place at the time the new reduced value XMI options begin trading that will be conducive to the development and maintenance of deep and liquid markets that are fair and orderly. Further, the Commission notes that because the split of the XMI will result in one option contract becoming two, there will not be a significant increase in the dollar value of transactions that can be automatically executed under this proposal. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning amendment no. 1 to the proposed rule change submitted by the Amex on September 18, 1991.[13] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 7, 1991.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR-Amex-91-21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-24938 Filed 10-16-91; 8:45 am]

BILLING CODE 8010-01-M

[10] 15 U.S.C. 78f and 78k-1 (1988).

[11] See letter from Edward Cook, Jr., Director, Systems Technology Division, Amex, to Victoria Berberi-Doumar, Staff Attorney, Division of Market Regulation, SEC, dated September 25, 1991. Specifically, the Amex represents that its order processing system, of which AUTO-EX is a part, has a tested capacity of 12 messages per second ("mps"). The Amex also represents that the system runs at about 3 mps on normal volume days, while the highest volume the system has ever experienced was 7.7 mps.

[12] See XMI Split Order, *Supra* note 8.

[13] *See supra* note 3.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-29812; International Series No. 328; File No. SR-NASD-90-33]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the NASDAQ International Service

October 11, 1991.

I. Introduction

On June 27, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-NASD-90-33) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] to create the NASDAQ International Service ("NASDAQ International" or "Service") for a pilot term of two years.[2] The Service will

[1] 15 U.S.C. 78s(b)(1) (1990).

[2] *See* Securities Exchange Act Release No. 28223 (July 18, 1990), 55 FR 30338. The NASD submitted four amendments to the filing. Amendment No. 1.

Continued

support an early trading session in London ("European Session"), from 3:30 a.m. to 9 [3] a.m. EST on each United States ("U.S.") business day, that coincides with the business hours of the London financial markets.[4] The filing contains the text of a specialized set of rules ("International Rules") that will govern the operation of NASDAQ International as well as the obligations of, access to and use of the Service by broker-dealers admitted to membership in the NASD, associated persons of such NASD members, and any non-member broker-dealer having the status of an approved affiliate of a NASD member, as determined by the NASD.[5]

II. Description

A. Overview

The Service is primarily designed to accommodate international trading by institutional investors in the United States, United Kingdom, and other parts of Europe. It will consist of the basic automation services currently provided during the Domestic Session to support market making by NASD members in NASDAQ, NASDAQ/NMS and exchange-listed securities.[6] The NASD anticipates that member firms located in the United States as well as the United Kingdom will participate as Service market makers.[7]

The European Session will run from 3:30 a.m. to one-half hour before the NASDAQ opening [8] on each business day in the United States, with pre-opening procedures commencing at 2:30 a.m. EST. Service market makers must be open for business from 3:30 a.m. to 9 a.m. EST on each U.S. business day. Additionally, Service market makers that are registered as International market makers in one or more qualified securities must be open for business during the hours of the Domestic Session.

The NASD stated that it has considered the capacity and vulnerability of the Service. The NASD also represented that it has adequate processing and network capacity to support the daily operation of the Service. All security measures applicable to entry of data through market maker terminals during the Domestic Session will also apply during the European Session.

B. Securities and Participants

1. Securities

The following classes of securities are qualified for inclusion in NASDAQ International: (1) All equity securities that are designated as NASDAQ/NMS securities; (2) all non-Canadian, foreign equity securities or American Depositary Receipts ("ADRs") that are included in NASDAQ but are not designated a NASDAQ/NMS security; and (3) all equity securities that are listed on a registered national securities exchange. The NASD only will include a qualified security in NASDAQ International if one or more broker-dealers commit to making a market as Service market makers.

2. Participants

A market maker may register as a European-only market maker (to participate only in the 3:30–9 session) or as an International market maker (to participate in the 3:30–9 session and the regular domestic NASDAQ session) in one or more qualified securities, and any approved affiliate [9] may register as a European-only market maker.

The NASD will only permit broker-dealers that are either NASD members or approved affiliates to participate as a Service market maker that also: (1) Have the equipment and communications lines specified by the NASD for receipt of NASDAQ Workstation Service; and (2) satisfy the financial and operational requirements applicable to market makers in NASDAQ securities or exchange-listed securities traded off-board during the Domestic Session.[10]

To function as a Service market maker, a NASD member or approved affiliate must register by filing an application with the NASD.[11] Should a NASD member wish to participate in the European session through an approved affiliate, the NASD will require the NASD member and its non-member affiliate to enter into a three-party agreement with the NASD.[12] This agreement specifies the terms and conditions for the affiliate's approval, and, in particular, the sponsoring member's compliance responsibilities respecting the affiliate's participation in the Service. These procedures are meant to place the same requirements upon the sponsoring member that would attach if

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submitted on October 3, 1990, amended the filing to permit participation in the Service by certain United Kingdom ("U.K.") affiliates of NASD members. See Securities Exchange Act Release No. 28705 (December 17, 1990), 55 FR 52341. Amendment No. 2, submitted on October 4, 1990, addressed transaction reporting for NASDAQ/NMS and exchange-listed securities quoted in the Service. See Securities Exchange Act Release No. 28708 (December 18, 1990), 55 FR 52347. Amendment No. 3, submitted on December 3, 1990, consisted of technical amendments that were included in Securities Exchange Act Release No. 28705. Amendment No. 4, submitted on June 10, 1991, further amended the transaction reporting plan for the Service. See Securities Exchange Act Release No. 29371 (June 26, 1991), 56 FR 30611. The NASD also submitted three letters. See letter from Joseph R. Hardiman, President, NASD, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated December 5, 1990 (presenting the NASD's position on off-board trading restrictions as they apply to trading supported by the Service), and letters from Frank J. Wilson, Vice President and General Counsel, NASD, to Robert L.D. Colby, Chief Counsel, Division of Market Regulation, SEC, dated February 5, 1991 (requesting a no-action letter respecting approved affiliates' participation in the Service without registration as broker-dealers pursuant to Section 15(a) of the Act), and to Christine A. Sakach, Branch Chief, National Market System Branch, Division of Market Regulation, SEC, dated August 15, 1991 (providing supplemental information regarding the International Rules).

[3] See note 8, *infra* and accompanying text.

[4] The domestic NASDAQ market will continue to be open from 9:30 a.m. to 4 p.m. EST ("Domestic Session"), and the NASD rules governing that session are not altered by the approval of this rule filing.

[5] The requirements of the International Rules are in addition to those contained in the NASD's Rules of Fair Practice, the By-Laws and Schedules to the By-Laws. Sections 6, 8, 9 and 12 of the International Rules, however, establish requirements that apply exclusively to participation in the Service during the European Session. As such, these provisions of the International Rules supersede parts VI, VII, XI and XII of Schedule D and sections 1, 2 and 5 of Schedule G to the NASD By-Laws.

[6] Access to these services for market making during the European Session will be available exclusively through NASDAQ Workstation units.

[7] A U.S. firm with no U.K. branch could participate by staffing its U.S. trading desk during the European Session. Similarly, a U.K. firm could participate through a U.S. affiliate, or through a U.K. branch of that affiliate.

[8] The European Session would therefore close at 9 a.m. EST. Should the U.S. markets open earlier, the NASD would adjust the closing of the European Session accordingly. The NASD would be required to file an amendment with the Commission, pursuant to section 19(b)(3)(A), to reflect this change.

[9] "Approved affiliate" means a broker-dealer that meets all of the following requirements: (1) It is not admitted to membership in the NASD or any registered national securities exchange; (2) it is authorized to conduct securities business in the United Kingdom in accordance with the Financial Services Act 1986; (3) it controls, is controlled by, or is under common control with a NASD member; and (4) it has been approved by the NASD to participate as a Service market maker, in an agency capacity, on behalf of the NASD member with whom it has a control relationship.

[10] NASD members that use NASDAQ Workstation units to receive Level 2 NASDAQ Service during the Domestic Session can also receive quotation information entered by Service market makers. Similar access terms will be provided to non-member, Level 2 subscribers using NASDAQ Workstation units. This information also will be provided to vendors for retransmission to their customers.

[11] A member's application shall certify its good standing with the NASD, demonstrate compliance with the net capital and other financial responsibility provisions of the Act and the rules thereunder, and specify the qualified security(ies) in which the member is seeking to register as a European-only or International market maker.

[12] See Agreement for Non-Member Access to the NASDAQ International Service, submitted on August 22, 1991.

it were to participate in the Service directly, rather than through an agent.

The contract provides that the affiliate will participate as a Service market maker on the member's behalf, in an agency capacity, through employees of the affiliate who will become registered representatives of the sponsoring member. The member and affiliate must represent that a "control relationship" [13] exists, that the affiliate is not a broker-dealer registered with the Commission nor a NASD member and that it is properly authorized under the Financial Services Act 1986 to carry on investment business in the United Kingdom.

The contract must include the designation of a registered principal as responsible for supervising the registered personnel that enter/update quotations in the Service from the affiliate's premises. The designated principal will be required to be present in the United Kingdom on the premises of the U.K. affiliate within nine months of approval by the NASD of the affiliate. The sponsoring member will be responsible for the development of adequate compliance procedures covering the affiliate's participation in the Service, which must be approved by the NASD before the affiliate initially can register as a Service market maker. The sponsoring member also must assume full responsibility for the affiliate's compliance with all provisions of the International Rules. [14] The contract further provides that the NASD must be assured prompt access, upon request, to original books and records wherever located that relate to the affiliate's participation in or use of the Service. [15] Should an affiliate not have an office in the United States, it will appoint and maintain the sponsoring member as its agent, on whom the affiliate consents to service of process.

European-only market makers will be required to quote, during the European Session, firm, two-sided markets in the qualified securities in which they have registered, subject to the procedures for excused withdrawal.[16] Should a market maker display a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another NASD member or approved affiliate, execute a transaction at least at the size displayed. In addition, a Service market maker should refrain from entering quotations into the Service that exceed the guidelines for maximum allowable spreads set forth in section 6(c)(iv) of the International Rules. International market makers will have identical obligations during the European Session and, in addition, be obliged to function as market makers in their respective registered securities during the Domestic Session.[17] The NASD will terminate a market maker's registration in a qualified security if the market maker fails to enter quotations in that security in the Service within five business days after its registration in that security first became effective.

NASD members and approved affiliates that effect international transactions must clear and settle all such transactions through a clearing agency registered with the Commission that uses a continuous net settlement system or through direct participation in a suitable clearing arrangement with another party. For purposes of this requirement, the term "international transaction" means every transaction having the following three characteristics: (1) The transaction involves a qualified security quoted in the Service by at least one registered market maker; (2) the transaction is consummated during the hours of the European Session between two NASD members, two approved affiliates, or a NASD member and an approved affiliate; and (3) the transaction involves at least one NASD member that is registered in any qualified security, or an approved affiliate.

C. Operation of the Service

As noted above, an International market maker is defined as a broker-dealer the maintains markets in one or more qualified securities during the European and Domestic Sessions. Operationally, this may be done by using the same market-maker identifier ("MMID"), including the same location identifier for both sessions. Thus, a NASDAQ workstation unit located in the United States (or the United Kingdom) could be authorized to receive the Service and support the member firm's activities as an International market maker between 3:30 a.m. and 4 p.m. EST. Alternatively, an International market-making commitment could be fulfilled by linking two trading desks of the same firm, utilizing two different location identifiers. Under this scenario, a U.S. firm with the MMID ABCD could have a trader at its London branch, with ABCDX as its MMID.[18] ABCDX would function as a market maker in one or more qualified securities during the European Session while ABCD (representing the U.S. trading desk) would function as the market maker in the same securities during the Domestic Session. Such an arrangement would allow the market maker's book to pass shortly before the U.S. market opens.[19] In this manner, the Service will accommodate the market-making practices of member firms located in the United States that have a trading desk in the United Kingdom, or vice versa.[20]

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[13] Amended section 2(g) of the International Rules defines control relationship to be instances in which the approved affiliate controls, is controlled by, or is under common control with a NASD member.

[14] The contract provides that the NASD will retain all of its disciplinary powers over members and their affiliates, with disciplinary proceedings being governed by the NASD Code of Procedure. Accordingly, the NASD may suspend or terminate an affiliate's access to the Service if a NASD disciplinary body (*e.g.*, the Market Surveillance Committee) determines that (1) the member has failed to properly supervise the affiliate's activities as a Service market maker, or (2) a violation of any rule or prohibition applicable to the Service market maker has occurred respecting the affiliate's participation in the Service.

[15] Should an affiliate determine not to provide the information directly to the Commission on a voluntary basis, the information shall be provided promptly to the U.K. Department of Trade and Industry for transmission to the Commission pursuant to the Memorandum of Understanding on Exchange of Information Between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and Between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures, [1986–87 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 84,027 (Sept. 23, 1986).

[16] Excused withdrawals and voluntary terminations of market maker registration will be handled in essentially the same manner as they are today in the NASD's Domestic Session. One noteworthy difference is the application of the 20-day waiting period for re-registration in a security included in NASDAQ. The NASD By-laws specify that a market maker that voluntarily terminates its registration in a NASDAQ security cannot re-register in that security for twenty days. With respect to the Service, this waiting period only will apply to instances of re-registration to quote a qualified NASDAQ security during the Domestic Session.

[17] During the Domestic Session, International market makers will be subject to the same obligations that now apply to member firms that are registered as market makers in NASDAQ or listed stocks.

[18] A unique fifth character ("X" in this example) will be appended to a participant's MMID to denote a market making position in the United Kingdom. The absence of that character will indicate a market making position in the United States.

[19] For this purpose, "passing the book" is defined as changing the geographic location of a market-maker position intra-day. The market making position of ABCD, a NASD member functioning as an International market maker in stock AAPL, will pass from its London trader, ABCDX, to its New York trader, ABCD, under the arrangement described above. ABCDX also may function as the firm's European-only market maker in other qualified securities in which the firm's New York office does not maintain market-making positions. Finally, another alternative for a passing-the-book arrangement would be a single firm making markets with unique four character MMIDs representing its New York and London offices, respectively.

[20] Supervisory action by the NASD staff would be required to initiate the system linkage that would enable the book to pass between two trading units of the same firm.

All qualified issues in the Service will be quoted and traded exclusively in U.S. dollars. The ranking of market maker quotes in an eligible security will continue to be based on price, and by time within price. Further, a closed quote will appear after all open portions. The following diagram illustrates a basic, bid-ranked screen display of market making interest in security AAPL during the European Session.

SEC ID	AAPL
INS	47½–48.
ABCDX	47½–48½.
MOTC	47½–49.
TSCO	47½–48½.
SAXP	47–48.
GSCO	47½–48½C.

This diagram reveals that the inside market (represented by the designation "INS") in AAPL is 47½–48. Market maker ABCDX appears first because it is quoting the highest bid and has time priority over the matching bids of MOTC and TSCO. Although MOTC and TSCO have identical bids, MOTC ranks ahead based on time priority. SAXP follows because its bid is inferior to the other three active market makers. GSCO appears in last position because the firm's quote reflects a closed status.[21] Of the four market makers that are open, only ABCDX is quoting a market in the Service from the United Kingdom.

The Small Order Execution System ("SOES") will not operate during the European Session. International market makers in NASDAQ/NMS securities, however, will assume SOES obligations during the Domestic Session. During the start-up phase of NASDAQ International, no automated order routing or automated execution capability will be provided. An enhanced version of the NASD's Order Confirmation Transaction service will be added shortly after the Service commences operation. Until then, member firms wishing to transact with Service market makers will rely on telephone communications to enter orders and negotiate executions.

D. Transaction Reporting

Amendment No. 2 to the proposed rule change added part Two to the NASD's Transaction Reporting Plan, contained in Schedule D of the NASD's By-laws.[22] The new part addresses the collection, processing and dissemination of reports of transactions in NASDAQ/NMS and listed equity securities that are quoted in NASDAQ International. These provisions apply exclusively during the business hours of the European Session and to NASD members that are International Participants.

Any round-lot or mixed-lot transaction in a Service security effected during the European Session involving at least one Service market maker must be reported.[23] Market makers shall enter trade reports on all reportable transactions within three minutes of execution through a NASDAQ Workstation unit authorized for receipt of the NASDAQ International Service or through a computer-to-computer interface.[24] All existing requirements for submitting audit trail information to the NASD, either directly or through a registered clearing agency, shall extend to participation in NASDAQ International.

In addition to reporting trades in NASDAQ/NMS and exchange-listed securities within three minutes, service market makers must submit to the NASD certain trade data as prescribed by the NASD. For example, a Service market maker shall report daily, no later than 9:17 a.m. EST; its total volume (purchases and sales) from that day's European Session in non-NMS securities that it is registered to quote.[25]

For the Service's pilot term, trade reports for certain ADRs of U.K. companies ("U.K. ADRs") that are quoted in the Service as well as the domestic component of the London Stock Exchange's ("LSE") Domestic Stock Exchange Automated Quotation ("SEAQ") system will be disseminated through vendors during the European Session. Because transaction reports in these U.K. ADRs are published by the LSE on a three-minute basis, the NASD also will disseminate last sale information on a three-minute basis, so long as the particular U.K. ADR is a reported security in the United States (in other words, is subject to real-time reporting in the United States) and is being quoted by at least two Service market makers.[26] Trade reports on all other reported securities quoted in the Service will be captured and processed by the NASD solely for regulatory purposes.[27] Shortly after the conclusion of each European Session, the NASD will disseminate the aggregate volume and the high, low, and closing transaction prices for each qualified security that is covered by the transaction reporting plan and is quoted by at least two registered Service market makers.

The principal method of enforcing compliance with the requirement that trades be reported within three minutes, is through the examination of broker-dealers' trading records during routine examinations.[28] In addition, the NASD will monitor compliance through a daily exception report that identifies trades reported at prices away from the prevailing market in a particular security.[29]

Should certain elements of information in a given trade report be missing or erroneous, the NASD automatically will reject the report. The NASD will send a reject message to the International participant's terminal and will require the participant to send a corrected trade. If more than three minutes have elapsed since the trade

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[21] Market makers participating in the European Session will have access to the previous day's closing quotes from the U.S. trading session. Participants in the U.S. session also will have access to that day's closing from the European Session.

[22] The transaction reporting system will be operated by the NASD's wholly owned subsidiary, Market Services, Inc. ("MSI"), which is responsible for acquiring, developing and maintaining the hardware and software necessary to support transaction reporting during the European Session. MSI also will have the capacity to contract with vendors of transaction information and subscribers to such data.

[23] Section 12(a)(iii) of the Transaction Reporting Plan for NASDAQ International enumerates the transactions that are not deemed to be reportable transactions as follows: (1) Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution; (2) transactions executed on and reported to a securities exchange domiciled outside the United States; (3) transactions made in reliance on section 4(2) of the Securities Act of 1933; (4) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for a qualified security, *e.g.*, to enable the seller to make a gift; and (5) purchases or sales of qualified securities effected upon the exercise of a right to acquire securities at a pre-established consideration unrelated to the current market.

[24] Members who report trades later than three minutes after execution shall designate those trades as late by adding the "SLD" indicator. Section 12(b) of the International Rules provides that a pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with the standards of commercial honor and just and equitable principles of trade, in violation of article III, section 1 of the NASD Rules of Fair Practice.

[25] In addition, the International Rules require Service market makers to report each business day all other data relating to qualified securities quoted in the Service as the NASD shall require.

[26] Rule 11Aa3–1(a)(4) under the Act defines "reported security" to mean any listed equity security or NASDAQ security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan. Any non-NMS NASDAQ security quoted in the Service will not be subject to trade reporting or trade publication even if that security is quoted in SEAQ domestic.

[27] Neither the NASD nor vendors, therefore, will publish transaction reports on these securities.

[28] NASD members based in Europe are now examined by staff from either the New York or Boston District Offices of the NASD.

[29] Instances of non-compliance will be investigated and referred to a NASD committee for regulatory action.

was executed, the participant must accompany the corrected trade report with a "SLD" indicator.[30] In addition, if a participant enters a trade at a price that varies more than a certain amount from previous trade reports in that security, the NASD will reject the trade report. Assuming that the price of the trade was accurate, the International participant must re-transmit the original trade report utilizing an override feature built into the trade reporting system.

There are substantive differences between the reporting requirements contained in section 12 of the International Rules and the reporting requirements applicable during the Domestic Session.[31] First, as noted above, section 12 provides that a trade report is timely if submitted within 3 minutes of execution, as opposed to 90 seconds, the established standard for the Domestic Session.[32] Second, the requirement to enter trade reports during the European Session is not necessarily limited to transactions in Service securities in which the broker-dealer is registered as a European-only market maker.[33] Third, as described above, during the pilot phase of NASDAQ International, trade reports in Service securities entered by International participants will not be disseminated except where: (a) The Service security is both a U.K. ADR quoted in the domestic SEAQ market and a NASDAQ/NMS security, and (b) at least two Service market makers are registered to quote the particular U.K. ADR during the European Session.

Given the nature of the Service and the limited purpose of the Plan, the NASD requested that the Commission grant two exemptions from the requirements of Rule 11Aa3–1.[34] First, because the NASD will provide for dissemination of transaction reports only for securities that are subject to real-time reporting in the United States, and three-minute reporting in the United Kingdom,[35] it has requested an exemption from the Rule's requirement to report transactions in securities covered by an effective transaction reporting plan.[36] Second, because the NASD has not yet made arrangements to consolidate NASDAQ International volume information with daily Consolidated Tape Association ("CTA") volume, it requested an exemption from the Rule's requirement that the Plan specify the method of consolidation with transaction reports from exchanges and associations reported pursuant to any other effective transaction reporting plan.[37]

E. Off-Board Trading Restrictions

As part of its filing, the NASD submitted a letter describing its position that exchange members should be permitted to make markets in all securities eligible for trading in the Service, including all securities listed on an exchange, even those securities that are subject to so-called off-board trading restrictions.[38] In light of increased trading in international markets, the NASD believes that it is necessary to revisit exchange restrictions on member activity outside normal market hours. It believes that eliminating restrictions on after-hours trading may attract some of the trading volume currently executed outside the United States back to national markets. The NASD therefore requested that the Commission allow exchange members to make markets in all listed securities during the hours of operation of the Service.

According to the NASD, the exchanges take the position that exchange members are required to execute trades in non-Rule 19c-3 [39] securities in the United States on an exchange, which compels after-hours trading in listed stocks to take place in non-U.S. markets. The NASD contends that this occurs because exchanges have interpreted their rules on members trading to allow member firms to trade any listed security on any organized foreign exchange at any time, and to trade those securities in foreign over-the-counter markets when exchange markets are closed.[40] The NASD states that if the Service were considered a foreign over-the-counter market, participation of exchange members would be permitted. Should the Service not be considered a foreign over-the-counter market, the NASD believes that it will be at a competitive disadvantage. It further states that the extension of off-board trading restrictions into after-hours trading systems is anti-competitive and counter to the development of new communications techniques and trading systems.

III. Comments

The Commission received three comment letters in response to its notice of the proposed rule change.[41] Professional Expert Trading Systems, Inc. ("PETS") [42] and Instinet Corporation generally support the internationalization of NASDAQ that the Service represents. The three commenters, however, urged the Commission not to accept the NASD's proposed rule change without certain trade reporting modifications. The changes suggested included the provision of full and simultaneous dissemination of all stock market information to all interested investors and the development of access terms and fees for the data.[43] The commenters believe that the NASD will restrict access to important market information by limiting the type and scope of information it will disseminate.

Instinet and the NYSE expressed concern over the fact that the NASD will not make trade reports available on a real-time basis. Both commenters objected to the requirement that transaction reports be submitted within three minutes of execution during the

[30] NASD Market Surveillance will receive an exception report on a daily basis reflecting by broker-dealer all "SLD" trades reports.

[31] Part XII of Schedule D to the NASD By-Laws contains the real-time reporting requirements applicable during the Domestic Session to market makers in NASDAQ/NMS securities. Schedule G to the NASD By-Laws contains the corresponding requirements for NASD members registered as "Third Market Makers" in listed equity securities during the Domestic Session.

[32] The three-minute standard conforms to the current standard in the domestic component of SEAQ.

[33] An International participant must report the transaction regardless of whether either party is a Service market maker in the affected security. See section 12(c)(iii) of the International Rules.

[34] See letter from Frank J. Wilson, Vice President and General Counsel, NASD, to Christine A. Sakach, Branch Chief, National Market System Branch, Division of Market Regulation, SEC, dated August 15, 1991. The Commission has authority under paragraph (g) of Rule 11Aa3–1 to grant exemptions from the provisions of the Rule.

[35] In the United States, only NASDAQ/NMS securities, which include a number of foreign securities traded as ADRs, and New York and American Stock Exchange-listed securities are subject to real-time transaction reporting. In the United Kingdom, only domestic securities in SEAQ are subject to three-minute reporting requirements.

[36] 17 CFR 240.11Aa3–1(c) (1) and (3) (1991).

[37] 17 CFR 240.11Aa3–1(b)(2)(iv) (1991).

[38] See letter from Joseph R. Hardiman, President, NASD, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated December 5, 1990.

[39] 17 CFR 240.19c–3 (1991). Rule 19c–3 under the Act amended the rules of the national securities exchanges to prohibit the exchanges from applying off-board trading restrictions to securities first admitted to trading after April 26, 1979.

[40] See New York Stock Exchange ("NYSE") Rule 390, Interpretation .10.

[41] See letters to Jonathan G. Katz, Secretary, SEC, from Jerome M. Pustilnik, President, Professional Expert Trading Systems, Inc., dated August 15, 1990; Daniel T. Brooks, Counsel to Instinet Corporation, Cadwalader, Wickersham and Taft, dated August 22, 1990; and James E. Buck, Senior Vice President and Secretary, NYSE, dated July 26, 1991.

[42] PETS is an information vendor to the professional stock trading community, whose Expert System analysis programs examine data received from SIAC and NASDAQ. The conclusions derived from this process are transmitted to PETS' subscribers.

[43] PETS also suggested that the NASD file a proposed fee schedule for each of the categories and levels of service it plans to provide.

trading session, and to trade reports being collected for market oversight purposes only, instead of being disseminated on a real-time basis to participants or investors. Instinet also was troubled by the lack of real-time trade reports for certain foreign equities and ADRs that will be quoted in NASDAQ International.

Instinet and the NYSE contended that by not providing widespread availability of information as to transactions in securities quoted in the Service, the proposed rule change does not conform with longstanding legal requirements and policies and the explicit legislative mandate in section 11A of the Act that emphasizes trade reports and quotations. The commenters asserted the benefits to the market that come from competition among market participants and to the public interest and the protection of investors when more complete, timely and widely available trade and quotation information become available. Instinet stated that it recognizes the pressures on international systems to conform to local practices, but believes that it is inappropriate to submit to these pressures where they deny investors access to important, real-time market information.

The NASD responded to the comments the Commission received and stated that, as Instinet recognized in its comment letter, the proposed rule change is an experimental, start-up service, designed, at least in part, to attract European traders.[44] The NASD asserts that the likelihood that the Service's ability to compete in the U.K. market would be greatly diminished if it were to enter the market with higher requirements than those of SEAQ. The current trade report dissemination practices of the London market do not require U.K. market makers to display the price and size of certain trades, or to publish price and size information on a real-time basis.

The NASD believes that broad dissemination of quotation information from Service market makers will assist in promoting interest among institutional investors that transact business in various national markets. Accordingly, the NASD intends to furnish interested vendors with broadcast feeds of quotation updates for all securities that are entered by Service market makers during the European Session. These feeds will enable vendors to offer their subscribers the same types of quotation data that are now available during the Domestic Session.[45]

The NASD also states that the formulation of appropriate access terms, including cost-based subscriber fees for receipt of NASDAQ International information by Level 2 or Level 3 subscribers, will be covered in a subsequent Rule 19b-4 filing. Because certain facets of the Service are still being developed, it is not possible to quantify the entire cost of the project. Moreover, the NASD lacks definitive data on the universe of potential market maker participants and other subscribers. Accordingly, it is not yet possible to formulate a cost-based subscriber fee for receipt of the Service.

IV. Discussion

The Commission has determined that the NASD's proposal is consistent with sections 15A(b)(6),[46] 11A(a)(1),[47] and 17A(a)(1)[48] of the Act. Section 15A(b)(6) requires, among other things, that the NASA's rules be designed to promote just and equitable principles of trade, facilitate transactions in securities, and protect investors and the public interest. Section 11A(a)(1) sets forth the Congressional findings that new data processing and communication techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, enhance opportunities to achieve best execution and promote competition among market participants. Finally, section 17A(a)(1) incorporates the Congressional goal of linking all clearance and settlement facilities and reducing the costs involved in the clearance and settlement process through the use of new data processing and communications techniques. Further, in reviewing the amendments to the NASDAQ/NMS Plan, the Commission must find that the amendments meet the standards set forth in section 11A of the Act and Rules 11Aa3–1 and 11Aa3–2 thereunder.

In addition to furthering the globalization of major securities markets, the Service is intended to promote additional commitments of member firms' capital to market making and attract commitments from firms based in Europe that currently do not function as market makers in NASDAQ and/or listed stocks. At the same time, the Service will operate subject to the NASD's automated surveillance capabilities, and will provide a marketplace for transactions in eligible securities to which the NASD Rules of Fair Practice, in large part, will apply, and thus will protect investors and the public interest.[49] The NASD also hopes to provide additional opportunities for the efficient execution and clearance of institutional orders by providing a mechanism for transactions effected in the United Kingdom to be cleared through U.S. clearance and settlement facilities.

The proposal, however, raises three significant issues. First, the NASD has proposed making the Service available to certain non-NASD members with U.S. affiliates that are NASD members. Second, the NASD has proposed to disseminate less information on securities quoted in the Service and in a less timely manner. Finally, the proposal raises the issue of the application of the NYSE Rule 390 to trading supported by the Service.

Non-Member Access

In its filing, the NASD requested that the Commission approve participation in the Service by approved affiliates that are not registered as broker-dealers pursuant to section 15(b) of the Act.[50] As described above, affiliates would be non-member broker-dealers that have a control relationship with a NASD member. Subject to certain contractual undertakings regarding the supervision of traders and compliance with the International Rules, a U.K. affiliate can be "approved" to quote markets in the Service and effect resulting transactions as agent for the sponsoring member. Because the corporate entity that constitutes the U.K. affiliate would not be required to join the NASD, the NASD has requested that the Commission issue a no-action letter respecting approved affiliates' participation in the Service without becoming registered as a broker-dealer pursuant to section 15(a) of the Act.[51]

The Commission recently reiterated "the fundamental significance of broker-dealer registration within the structure of U.S. securities market regulation."[52]

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[44] See letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Jonathan G. Katz, Secretary, SEC, dated November 1, 1990.

[45] For example, the NASDAQ Level I service and the National Quotation Data Service. The NASD will distribute this quotation information directly to vendors through existing link-ups.

[46] 15 U.S.C. 78*o*–3 (1987).

[47] 15 U.S.C. 78k–1 (1990).

[48] 15 U.S.C. 78q–1 (1990).

[49] See note. 5, *supra.*

[50] 15 U.S.C. 78*O*(b) (1990).

[51] See letter from Frank J. Wilson, Vice President and General Counsel, NASD, to Robert L.D. Colby, Chief Counsel, Division of Market Regulation, SEC, dated February 5, 1991.

[52] Securities Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30014 ("Release 34–27017").

Accordingly, the Commission interprets the definitions of "broker" [53] and "dealer" [54] broadly to include foreign as well as domestic persons, subject to the broker-dealer registration requirements of section 15(a) of the Act [55] if they induce or effect securities transactions with U.S. persons or in the United States.[56] Thus, if a securities transaction with a person in the United States is solicited by a foreign broker-dealer, that broker-dealer must register with the Commission.[57] In particular, the dissemination in the United States of foreign broker-dealers' quotations for securities typically would be a form of solicitation requiring registration.[58]

The entry of quotations in the Service by the U.K. broker-dealers that are designated as approved affiliates of sponsoring NASD members would require those U.K. broker-dealers to register with the Commission. Contemporaneously with the approval of this order, however, the Division of Market Regulation has taken a temporary no-action position regarding the participation of approved affiliates in the Service that is coextensive with the two-year pilot program approved by the Commission.[59] The Division noted that an approved affiliate will enter quotations in the Service only as agent for its sponsoring NASD member, and that the personnel in the United Kingdom through which the affiliate participates in the Service will be registered representatives of the sponsoring NASD member and supervised by a registered principal of that member at first located in the United States, who will be located on the premises of the U.K. affiliate within nine months of the affiliate's approval.

Because the approved affiliate will act as agent for its sponsoring NASD members, the affiliate's transactions in qualified securities quoted in the Service will be reordered on the member's books and records as if the member had effected the transactions directly, and will be reflected in the member's net capital computation. U.S. investors wishing to purchase qualified securities during the European Session will be required to be a customer of the sponsoring NASD member, and all transactions with or for U.S. persons in qualified securities quoted in the Service will be effected in the accounts of those customers with the member. The approved affiliate will not hold the funds or securities of customers of that member, but the member will be required to disclose to customers the role of the approved affiliate in the market making activities of the member.

In addition, the sponsoring NASD member will be responsible for compliance by the approved affiliate with the International Rules,[60] and the NASD will be able to take disciplinary action against the member, its registered representatives on the premises of the affiliate, and the registered principal supervising those representatives, for failure to comply with any applicable regulatory provision.[61] Under the terms of the agreement for non-member access,[62] each approved affiliate will permit the NASD, upon request, to obtain prompt access to original books and records wherever located that relate to the approved affiliate's use of the Service, and to forward any documents or information provided to the NASD to any requesting governmental agency with jurisdiction over the NASD (including the Commission), any self-regulatory organization ("SRO") that participates in the Intermarket Surveillance Group, or any self-regulating organization recognized under the Financial Services Act 1986. The Commission notes that this provision of the agreement for non-member access will not prejudice the ability of the Commission to obtain information, documents, or testimony pursuant to its statutory authority or any other manner,[63] in connection with securities matters related to the Service pursuant to its Memorandum of Understanding on Exchange of Information with the U.K. Department of Trade and Industry.[64]

Trade Reporting and Exemptions from Rule 11Aa3–1

The Commission is also concerned about the limited transaction reporting that the NASD has proposed for the Service. While the NASD would require that all trades executed by market makers in the Service be reported to the NASD within three minutes of execution, the NASD only will provide for dissemination of those transaction reports for securities that are subject to real-time reporting in both the United States and in the United Kingdom. The NASD also has proposed an exception from the real-time reporting requirement for sole market makers in any security. The NASD represented that this exception was necessary because securities with less than two market makers are not allowed to be quoted in SEAQ, which effectively imposes a two-market maker minimum for LSE trade reporting purposes. The NASD also believes that requiring a sole market maker to publish such information would make the market maker subject to being "picked off." The Commission's acceptance of this exception, however, is explicitly conditioned on the continuation of the LSE's two market maker policy and an obligation on the part of the NASD to notify the Commission should this policy change.

In addition, the NASD is proposing to disseminate market data on listed securities through NASDAQ facilities rather than CTA facilities, and thus will not consolidate volume effected during the European Session with volume in the same securities effected during the 9:30 to 4 sessions.

Rule 11Aa3–1 generally requires that every market file a transaction reporting plan governing the collection, processing, and dissemination of last sale data on listed equity and NASDAQ securities. In addition, the rule requires, among other things, that the markets disseminate transaction reports in individual reported securities [65] and

[53] Section 3(a)(4) of the Act, 15 U.S.C. 78(c)(a)(4) (1988).

[54] Section 3(a)(5) of the Act, 15 U.S.C. 78(c)(a)(5) (1988).

[55] 15 U.S.C. 78*O*(a) (1990).

[56] See Release 34–27017, 54 FR at 30016. In Release 34–27017, however, the Commission adopted Rule 15a-6 under the Act, 17 CFR 240.15a-6 (1991), to provide conditional exemptions from registration for foreign broker-dealers engaged in specified activities involving U.S. investors and securities markets, principally effecting transactions with U.S. institutional investors through registered U.S. broker-dealer intermediaries.

[57] Release 34–27017, 54 FR at 30017.

[58] Release 34–27017, 54 FR at 30016.

[59] See letter from Robert L.D. Colby, Chief Counsel, Division of Market Regulations, SEC, to Frank J. Wilson, Vice President and General Counsel, NASD, dated October 11, 1991. In the same letter, the Division also has advised the NASD that NASD members acting as market makers in qualified securities during the Domestic Session would be required by Rule 10b-10 under the Act, 17 CFR 240.10b-10 (1991), to disclose that status when they effect principal transactions with customers in the same securities quoted in the Service during the European Session.

[60] The affiliate will be an "associated person" of the member within the meaning of section 3(a)(18) of the Act, 15 U.S.C. 78c(a)(18) (1988).

[61] The applicable regulatory provisions include the International Rules, the NASD's Rules of Fair Practice, By-Laws, and Schedules to the By-Laws.

[62] See note 12, *supra* and accompanying text.

[63] For example, under new section 17(h)(2) of the Exchange Act, 15 U.S.C. 78q(h)(2) (1990), if the Commission reasonably has concerns regarding the financial or operational condition of a registered broker or dealer, or a registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, the Commission may require the registrant to make reports concerning the financial and securities activities of the registrant's associated persons (other than natural persons), including foreign persons, whose business activities are reasonably likely to have a material impact on the financial or operational condition of the registrant.

[64] See note 15, *supra*.

[65] 17 CFR 240.11Aa3–1(c)(1) and (3) (1991).

consolidate transaction volume on the individual reported securities with volume in the same security executed in other markets.[66] The exchanges and the NASD created CTA and filed the CTA Plan to comply with the rule for listed securities.[67] In addition, the NASD has created a transaction reporting plan governing the reporting of transactions in NASDAQ/NMS securities. As described above, however, the NASD will not disseminate reports on all securities subject to CTA or NASDAQ/NMS Plan reporting requirements and, at least initially, will not consolidate volume in CTA securities with volume from the 9:30 to 4 trading sessions. The trade reporting procedures that the NASD has proposed for the Service thus are, to a certain degree, inconsistent with those Plans, and with the Rules under which those Plans were approved. The NASD has therefore requested two exemptions from the requirements of Rule 11Aa3–1 [68] to: (1) disseminate transaction reports for securities quoted in the Service,[69] and (2) provide for the consolidation of transaction reports from other markets trading the same security.[70]

The Commission is concerned over the limited nature of the transaction information to be disseminated. Currently, more than 200 U.S. stocks are listed on foreign exchanges, and aggregate trading volumes outside the United States now represent an important percentage of total trading in many stocks. The Commission is working to promote the availability of data concerning trading volumes and prices so that U.S. investors, analysts and others have a full picture of total trading volume. It is disturbing, therefore, to entertain the development of a new system that does not further the transparency of the market, but, instead, encourages the unavailability of timely trading information. As the Commission has stated numerous times, transparency is crucial to the efficient and fair operation of our capital markets. Market transparency has been an essential aspect of the Commission's efforts to facilitate the establishment of a national market system. Market transparency, in the form of trade and quotation information, enhances liquidity in the marketplace and provides investors with the opportunity to ensure the best execution of their orders. The lack of widespread availability of transaction information, therefore, has an adverse impact on the efficiency of the market.

Nevertheless, in recognition of the desirability of repatriating order flow, the Commission, on occasion, has adopted a flexible approach in interpreting regulatory requirements during the start-up phase of proposals that the Commission believes will bring some benefit to the markets.[71] The Commission is somewhat sympathetic to the NASD's arguments that the Service's limited transaction reporting requirements are the only practical response for an entity that is trying to introduce a market where there is already a well-established market in operation with rules that are less comprehensive than those in the United States. The Commission also understands the argument that the Service would not be a viable competitor if its rules were dramatically more stringent than those of its primary competitor. In addition, the Commission believes that if NASDAQ International is successful, it will return order flow currently being executed overseas back to the scrutiny of U.S. regulators, with the attendant benefits of Commission and SRO oversight. While the Commission recognizes the problems created by the lack of real-time reporting and the lack of consolidation of data in listed securities, it also recognizes the reality that a growing number of trades in eligible securities are occurring overseas. The Commission, therefore, believes that extending the protection of the U.S. regulatory system to trading by U.S. investors currently conducted overseas will benefit the marketplace and help protect the investing public. For these reasons, the Commission has concluded that it is appropriate to grant the NASD a two-year exemption from paragraphs (c)(1) and (c)(3) of rule 11Aa3–1, which require the NASD to disseminate transaction reports for reported securities.[72]

The Commission also is granting the NASD a two-year exemption from rule 11Aa3–1(b)(2)(iv) which requires that provision be made in the Plan for the consolidation of volume from other markets trading the same securities. The Commission has decided to grant the NASD a temporary exemption from this requirement because the NASD has stated that it will work with CTA to accomplish this goal.

In addition, the Commission has decided to approve the amendments to the NASD's transaction reporting plan to provide for the dissemination of quotation and transaction information on CTA/CQ stocks because the NASD will be the only CTA participant open at that time. Although the CTA/CQ plans address the reporting of trades after "normal operating hours," [73] the Commission recognizes that economically it is more efficient for the NASD to disseminate through its system as opposed to paying for CTA/CQ to remain open.

Because there is no other comparable U.S. market open during the European Session, the Commission does not believe that the use of NASD's own facilities to disseminate market information on CTA securities is inconsistent with section 11A at the present time.[74] Of course, should another U.S. SRO system be open for trading during the same time, quotation and transaction information will have to be consolidated.

NYSE Rule 390

As noted above, the NASD also requested that the Commission revisit whether it is now appropriate to modify NYSE Rule 390, at least as it applies to after-hours trading. The Commission believes, however, that the issue of Rule 390's continued validity raises a number of significant market structure issues that cannot be fully aired in the context of the limited proposal that is currently before the Commission. Thus, we believe it is appropriate to defer action on the questions raised by the NASD until these larger issues may be comprehensively addressed.

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[66] 17 CFR 240.11Aa3–1(b)(2)(iv) (1991).

[67] See Securities Exchange Act Release No. 10787 (May 10, 1974).

[68] The Commission has authority under paragraph (g) of rule 11Aa3–1 to grant exemptions from the provisions of the Rule.

[69] 17 CFR 240.11Aa3–1(c)(1) and (3) (1991).

[70] 17 CFR 240.11Aa3–1(b)(2)(iv) (1991).

[71] See, e.g., letter from William H. Heyman, Director, Division of Market Regulation, SEC, to Catherine R. Kinney, Senior Vice President, NYSE, dated May 24, 1991. The letter granted the NYSE certain temporary exemptions from Rule 11Aa3–1 in connection with the operation of the off-hours trading sessions. Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853.

[72] This is conditioned upon no change in the LSE reporting requirements, which the NASD believes necessitate the exemption request. In other words, should the LSE's three-minute reporting requirement be reduced, the NASD would have to promptly modify its requirement accordingly.

[73] The Plan provides that "expenses incurred in reporting trades after the end of the normal operating hours of the NYSE and American Stock Exchange will be allocated on an appropriate pro rata basis." See Securities Exchange Act Release No. 10787 (May 10, 1974).

[74] The Commission also took into consideration the fact that, since 1976, NASDAQ, Inc. operates a national network of terminals and has been registered as a Securities Information Processor, assuring the prompt, accurate and reliable performance of its functions as a Securities Information Processor.

Standards for Evaluating the Pilot

Given the concerns on a number of issues raised by the proposal, the Commission will grant approval of the Service, including the amendment to the NASD's transaction reporting plan, for a limited two-year pilot program, with the expectation that these concerns will be re-addressed at the end of that period. Among the issues the Commission intends to revisit at the end of the pilot program are whether: (1) Unregistered broker-dealers should continue to have access to the Service; (2) the supervision of affiliates has been adequate; (3) additional securities should be subject to real-time reporting in NASDAQ International; (4) the three-minute reporting standards should move towards the U.S. 90-second standard; (5) the one-market maker exception should be eliminated; and (6) the consolidation of transaction reports or volume is necessary.

Further, the NASD will provide the Commission with monitoring reports for the Service every six months. The reports will consist of all pertinent information concerning the system, including: (1) The number of market makers; (2) the number of securities; and (3) share volume, transaction volume and dollar value (with average daily balances). These figures should be broken down into half hour brackets during the session. In addition, the report shall include a quantitative and analytical assessment of the effects, if any, of the pilot rules on the liquidity in the marketplace and execution quality of customer orders. In particular, we would expect such a study to involve a comparative assessment of the bid/ask spreads in the different trading sessions, as well as an assessment of the continuity and depth of the various markets. The report also must provide a comparison of the closing prices in NASDAQ International and the opening prices in the U.S. markets as appropriate. Finally, the report must evaluate the feasibility of commencing real-time trade reporting for all securities quoted in the Service at 8 a.m. EST.

The Commission believes that the two-year approval period will provide the Commission, the NASD and market participants the opportunity to observe and evaluate the actual operation of NASDAQ International. The Commission, however, wishes to emphasize that a number of issues remain open and subject to change. Based on the performance of the Service and its impact on the market, the Commission may require certain changes to the Service during the pilot period. The Commission, for example, will require modification of the NASDAQ International rules if it finds that real-time dissemination is indispensable. Also, should the SEAQ or SEAQ International transaction requirements be modified to increase transparency, the NASD must promptly amend NASDAQ International accordingly. Should the changes on SEAQ or SEAQ International decrease the transparency of the market, however, NASDAQ International shall remain unchanged. The Commission, therefore, intends to consider these issues actively during the operation of the Service and will impose any requirements it determines are appropriate to protect investors and the public interest and promote fair competition.[75]

V. Conclusion

In view of the above, the Commission has concluded that the proposed rule change is consistent with the requirements of the Act, including sections 15A, 11A and 17A, and the rules and regulations thereunder, and that it is appropriate to approve the NASDAQ International Service for a limited pilot period.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a two-year pilot program, ending October 11, 1993. It is further ordered that the NASD be granted the following exemptions from the rule 11Aa3–1 requirements: (1) In paragraph (c)(1) and (3) that the NASD disseminate transaction reports for reported securities quoted in the Service; and (2) in paragraph (b)(2)(iv) that the Plan provide for the consolidation of transaction reports from other markets trading the same security.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Dissenting Statement of Commissioner Fleischman

Once again, as in the case of the New York Stock Exchange's Crossing Session II,[76] I dissent from an Order approving trading session rules that afford only end-of-session disclosure-in-gross to the market. This Commission preaches transparency to the Congress [77] and to the securities world,[78] but for the second time within five months it fails to require trade transparency when proposed marketplace rules afford it the opportunity to do so.

The shortfall between what this Commission preaches and what it practices as to transparency is emphasized by the comparison of the Commission's own statements in the foregoing Order. On the one hand,

- The Commission finds it "disturbing * * * to entertain the development of a new system that does not further the transparency of the market, but, instead, encourages the unavailability of timely trading information";
- The Commission repeats its prior position that "transparency is crucial to the efficient and fair operation of our capital markets"; and
- The Commission believes that "transparency * * * enhances liquidity in the marketplace and provides investors with the opportunity to ensure the best execution of their orders." [79]

On the other hand, the Commission, by today's action (speaking louder than its words), accepts aggregate end-of-session volume and price disclosure as "the only practical response" where an existing foreign market functions "with [transaction reporting] rules that are less comprehensive than those in the United States"; and the Commission justifies today's action as a response to "the reality that a growing number of trades in eligible [domestic] securities are occurring overseas." [80] That action is in

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[75] Specifically, the Commission has granted the NASD exemptions from the transaction reporting requirements of rule 11Aa3–1 pursuant to paragraph (g) of the rule. The Commission, therefore, may modify its exemption if it determines it is necessary for the efficient and fair operation of the market.

[76] Securities Exchange Act Release No. 29237, 48 SEC Docket (CCH) 1512, 1531 (May 24, 1991) (Dissenting Statement of Commissioner Fleischman).

[77] See, *e.g.*, Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Concerning the Commission's Authorization Request for Fiscal Years 1992–1994, Before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, United States House of Representatives at 6 (May 2, 1991).

[78] Automated Securities Trading: A Discussion of Selected Critical Issues (A Paper Prepared by the Div. of Mkt. Reg. of the U.S. Sec. and Exch. Comm. for the IOSCO 1991 Ann. Mtg. Panel on Automated Trading) at 15–16 (Sept. 26, 1991) ("IOSCO Paper"). The views presented to the same panel on behalf of the NASD appear to be similar: "While the balance for and against market transparency, particularly with respect to institutional trading in off-hours from the home market, is complex, it appears undesirable to default to the least possible market transparency." J.R. Hardiman, Automation and Electronic Trading: Key Issues for Regulating in a New Era (1991 IOSCO Ann. Conf.) at 5 (Sept. 26, 1991).

[79] Order, part IV, fifth paragraph under the caption "Trade Reporting and Exemptions from rule 11Aa3–1".

[80] Order, part IV, sixth paragraph under the caption "Trade Reporting and Exemptions from rule 11Aa3–1".

direct contradiction to the declaration that the Commission's Division of Market Regulation made at the recent IOSCO Annual Meeting

Transparency needs for particular securities should be assessed on a global basis in order to avoid a flight to opacity. For example, where a foreign market seeks to offer less transparency than is available in the security's home market (assuming, as is usually the case for equities, that the home market is the primary market), this difference in transparency should be *justified on the basis of fairness and efficiency, not competitive, considerations.*[81]

During the discussion at the Open Meeting, the other Commissioners expressed their belief that opacity could be accepted as an initial-stage concession, to be replaced after a time by trade-by-trade reporting. Sacrifice of transparency for competitive reasons is a mistake from the beginning; competitive pressures to maintain opacity, and to attract participants back to local-market opacity, will be no less compelling in six months, a year or longer.[82]

Perhaps my best course is to repeat, and to continue to repeat, the essence of what I wrote last May, adapted to the NASD rules approved today: To report each day's European session transactions solely as a total amount of shares with high/low/close prices, without disclosure of price or volume of individual trades, may present the facile advantage of shielding those directly involved in individual trades from the normal domestic market risk that accompanies market awareness (and may do so in a manner that approximates local practice in London), but the parallel and obverse effect is clear. Reporting-in-gross deprives all market participants, other than those directly involved, of crucial market information, and mocks what this Commission claims to be one of the fundamental tenets of American market regulation. Detailed information regarding every European session trade will be supplied to the NASD, and thereby will be available to the Commission, for regulatory monitoring purposes, but supplying information for surveillance, as important as it may be, is a distant second in importance to disclosing information to the marketplace. To whatever extent one accepts the theories of capital market efficiency and the regulatory policy consequences flowing from those theories, there can be no doubt that efficiency is adversely impacted by the deliberate withholding of market information.

* * * * *

A note concerning the "Standards" for evaluating these pilot rules.

There was a progression visible in the Commission's treatment of standard-setting for pilot market rules in the period culminating in June 1990.[83] After gradually professionalizing its approach to pilot rules, the Commission finally laid out a program of pre-framed criteria (open to supplementation by the relevant SRO), and concurrent evaluation of alternatives, for quantitative assessment of the impact of the particular rules in terms of market results that the rules' proponents themselves accepted. And the Commission included in that program its own advance notice that it would have difficulty making the section 19(b) findings necessary to temporary extension or permanent acceptance of the pilot rules if application for the pre-framed criteria demonstrated adverse market impact. How strange it seems to me for this Commission now to step back from that program and that advance notice! I suppose I should be grateful that at least references to spreads, continuity and depth survived in the instant Order, as matters that should be "involve[d]" in the reports to be submitted to the Commission by the NASD.

The Commission, the rule proponents and the public—whose interest is ultimately at stake benefit—from the integrity and rigor of pre-framed criteria. The performance of market regulatory responsibilities in 1991 reburies no less. To attempt that performance while ignoring the very minimum framework governing professional economic studies is reminiscent of the American Know-Nothing tradition of 150 years ago, and, in my opinion, subverts the discharge of the Commission's responsibility for "perfect[ing] the mechanisms of the national market system for securities".[84]

* * * * *

Transparency is not a toy to be picked up, played with and discarded when another toy competes for attention. Nor is transparency a flag to be accorded protestations of loyalty until re-furled and re-closeted. Nor is transparency a horn to be sounded to summon support in jurisdictional or administrative struggles. To me, transparency is a core market principle; it is nothing more nor less than disclosure—disclosure of trade (as well as quote) information in the trading market context. Of course there are outside limits to the mandated application of transparency,[85] just as there are outside limits to the mandated application of disclosure. But those outside limit are no-wise implicated by the instant NASD pilot rules.

The American securities market instrumentalities, in my view, do and will compete with foreign markets on the basis of the unrivalled fundamental strengths of the American markets: Liquidity, transparency, ease of entry, and breadth of participation. To sacrifice one of those fundamentals—transparency—and thereby to diminish the others remains, for me, too high a price to pay to accomplish the laudable purpose of furthering the role of domestic market instrumentalities in international market competition. How this Commission can deliberately, and repeatedly, choose to extend the infection of what the Chairman himself has condemned as the "virus of opacity" is very difficult for me to understand. In any event, the sacrifice of trade transparency in the NASD's instant pilot rules prevents me from concluding, as section 19(b) mandates that I must, that these new rules would be consistent with the purposes and requirements of section 15A(b)(6) (quoted above) or of section 11A(a)(1)(C) ("It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities * * *".)

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[81] IOSCO Paper, 16 (emphasis added).

[82] Reference is made to the tapes of the Open Meeting of the Commission held on October 10, 1991, recording the statements and inquires of each of the Commissioners and the responses of the staff. See the last sentence of the second paragraph under the caption, "Standards for Evaluating the Pilot", in the Order, part IV.

[83] See, e.g., Securities Exchange Act Releases No. 25599, 40 SEC Docket (CCH) 966, 970 n 25 (Apr. 19 1988); No. 28167, 46 SEC Docket (CCH) 832, 834 (June 29, 1990); and No. 28282, 46 SEC Docket (CCH) 1206, 1213 (July 30, 1990).

[84] Securities Exchange Act section 15A(b)(6).

[85] In the course of the Panel on Automated Trading presented at the recent IOSCO Annual 1991 Meeting, Mr. Peter Rawlins, Chief Executive Officer of the London Stock Exchange, offered (if I heard properly) to present "chapter and verse" to establish that we here in the United States had been inappropriately insisting on mandated application of transparency. I await the evidence with interest.

[Release No. 34-29809; Files Nos. SR-NASD-90-59, SR-NASD-91-17]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Changes Relating to the Small Order Execution System

October 10, 1991.

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission") on November 1, 1990, and amended on November 20, 1990, a proposed rule change, SR-NASD-90-59 ("initial proposal") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] to expand the definition of the phrase "professional trading account" in the Rules of Practice and Procedure for the NASD's Small Order Execution System ("SOES").[2] On April 15, 1991, the NASD submitted to the Commission, and amended on May 6, 1991 and May 8, 1991, a proposed rule change, SR-NASD-91-17 ("second proposal") pursuant to section 19(b)(1) of the Act to expand the definition of the phrase "day trade" in the Rules of Practice and Procedure for SOES.[3]

I. Background

SOES was designed to provide the benefits of automatic execution to retail customer orders of limited size for securities quoted on the National Association of Securities Dealers Automated Quotation ("NASDAQ") System.[4] It offers an alternative to traditional telephone contact and negotiation with market makers. Orders entered in SOES are executed automatically at the inside market.[5] SOES automatically reports the trade data to the clearing corporations, in contrast to non-SOES trades, where the broker-dealer itself must transmit the information to the clearing corporation. SOES reduces paperwork and limits the need for telephone contact. Such enhanced efficiencies are especially useful in active markets.

In response to the problems which occurred during the market break of 1987, the NASD adopted a number of rules to facilitate the execution of retail customer orders in SOES and to ensure market maker presence in the system.[6] After significant enhancements were made to SOES, the NASD began to receive complaints from market makers and became concerned that some SOES Order Entry Firms [7] has been using SOES to execute orders for so-called "professional traders." The changes made to SOES enabled them to take advantage of slight price disparities between and among market makers by executing within seconds up to five orders for 1,000 shares each and liquidating their positions shortly thereafter at the new market price. In response to these concerns, the NASD in 1988 prohibited so-called "professional trading accounts," from using SOES.[8] Professional trading accounts were defined to include any account in which five or more "day trades" [9] have been executed through SOES during any trading day or where a professional trading pattern in SOES is exhibited.[10]

In the instant filing, the NASD proposes to expand the definition of the phrase "professional trading account." The initial proposal adds four factors to be considered by its Market Surveillance Department in determining whether to designate an account as a professional trading account: (1) Excessive frequency of short-term trading; (2) excessive frequency of short sale transactions; (3) existence of discretion; [11] or (4) direct or physical access to SOES execution capability, to NASDAQ Level 2,[12] or to National Quotation Data Service ("NQDS").[13] The existence of any one of these conditions does not necessarily mean that an account will be classified as a professional trading account. Rather, the NASD states that they are factors to be considered when making such a determination. The existence of several of these factors could result in the account being classified as a professional trading account if SOES abuses are noted. Once an account is classified as a professional trading account, member firms are prohibited from using SOES to execute orders on behalf of the account.

The second proposal expands the definition of "day trade" by eliminating the restriction that both sides of a trade must be executed through SOES for it to be considered a day trade.

Notice of SR-NASD-90-59 together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 28709, December 19, 1990) and by publication in the Federal Register (55 FR 53224, December 27, 1990). The Commission received 26 comment letters on the proposed rule change.

Notice of SR-NASD-91-17 together with the terms of substance of the proposal was provided by the issuance of a Commission released (Securities Exchange Act Release No. 29181, May 9, 1991) and by publication in the Federal Register (56 FR 22495, May 15, 1991). The

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] NASD Securities Dealers Manual, CCH ¶ 2451 "SOES Rules").

[3] The Commission today is also approving a proposal to establish a 15 second delay between SOES executions to permit market makers to update their quotes (SR-NASD-91-18) and a proposal permitting market makers to specify from which firms they consent to receive preferenced orders (SR-NASD-91-26). See Securities Exchange Act Release No. 29810.

[4] See SR-NASD-84-26, Securities Exchange Act Release No 26361, (October 29, 1984), 49 FR 44042 (November 1, 1984) which provided notice of the NASD's proposal to establish SOES.

[5] The "inside market" is the best bid or ask price, as the case may be, for a security.

[6] During the market break of October 1987, the over-the-counter ("OTC") market experienced severe price declines and record high volume. Displayed quotations did not always reflect the prevailing market. The liquidity of the OTC market was reduced dramatically because market makers withdrew from NASDAQ and SOES. The NASD made several changes to NASDAQ as well as SOES in response to these problems. The NASD made participation in SOES mandatory for all market makers in NASDAQ/National Market System ("NMS") securities, increased the penalty imposed on market makers who withdrew from NASDAQ or SOES without a permissible excuse, and required market makers to commit to executions in SOES for at least five times the maximum order size in every security for which they make a market if their quotes are at the inside market or if the orders are preferenced to them. See SR-NASD-88-1, Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22594 (June 16, 1988).

[7] An NASD member who is registered as a SOES order entry firm may enter orders of limited size for execution against SOES market makers. See SOES Rules, § (a)(6), NASD Manual, ¶ 2451, at 2303.

[8] See SR-NASD-88-43, Securities Exchange Act Release No. 26361 (December 15, 1988), 53 FR 51605 (December 22, 1988). On August 5, 1991, the Commission received a Petition to Institute Rulemaking Proceedings to delete the provision, previously adopted in SR-NASD-88-43, that prohibits members from using SOES to enter orders on behalf of professional trading accounts. The Commission today denied the Petition to Institute Rulemaking Proceedings.

[9] The rule currently defines "day trades" or "day trading" to mean the execution of offsetting trades in the same security for generally the same size during the trading day.

[10] A professional trading pattern is deemed to be demonstrated by: (1) the existence of a pattern or practice of executing day trades; (2) the execution of a high volume of day trades in relation to the total transactions in the account; or (3) the execution of a high volume of day trades in relation to the amount and value of securities held in the account.

[11] The NASD has indicated that the "existence of discretion" refers to a customer account for which a broker-dealer is vested with any discretionary authority, commonly referred to as a discretionary account, rather than time and price discretion. Some commentators were concerned that the NASD meant the latter. See letter from Stephen D. Hickman, Secretary, NASD, to Katherine England, Branch Chief, Branch of OTC Regulation, Division of Market Regulation, SEC, dated May 13, 1991.

[12] NASDAQ Level 2 service consists of all market makers' bids and offers for all NASDAQ securities.

[13] The NQDS service consists of the same quotation information as Level 2 but is provided to vendors in the form of a data stream rather than a preformatted display of information. The vendor, therefore, must arrange the quotation information for retrieval and display by subscribers.

Commission received 75 comment letters on the proposed rule change. This order approves both proposed rule change.

II. Comment Letters

A number of the comment letters received opposed adoption of SR-NASD-90-59.[14] The commentators set forth four central arguments for not approving this proposal.[15] First, they argue that this rule, if approved, would disadvantage an entire class of investors by excluding them from SOES, thereby preventing them from obtaining the "best execution" of their orders. They assert that by labeling them professional traders the NASD is discriminating against them.

Second, the commentators argue that this proposed rule is not necessary; there is no documentation that the practice the NASD seeks to prohibit is abusive and has a negative impact on the market.[16] According to the commentators, the NASD is erecting a protective barrier in favor of market makers and restricting competitive forces due to a bias in favor of these market participants. They assert that if this rule is approved, market makers will not have as much motivation to update their quotes, spreads will widen, and because trading will be inhibited, liquidity will be reduced. The commentators assert that SOES is the only market where market makers must honor their quotes and if this proposal is approved the Commission would, in effect, be allowing market makers to back away from their quotes by excluding this class of investors.[17] The commentators believe SOES allows for fast, fair and equitable execution and should not be altered. According to the commentators, SOES creates a great degree of stability in the OTC market by causing market makers to maintain a truly competitive price structure and act in a responsible way.

Third, several commentators criticize the language of the proposal. They argue the proposal lacks substance and is vague. They also claim the factors to be examined by the NASD when determining if an account is a professional trading account have no basis and are arbitrary and capricious. One commentator asserts that by using words such as "criteria" and "pattern" the NASD is asking for unfettered discretion in determining who is a professional trader.[18]

Fourth, some of the commentators recommend that the NASD reduce exposure limits [19] rather than expand the definition of professional trading account.[20]

The commentators who favor the proposed rule change assert this proposal is necessary to prevent certain individuals and firms from using SOES to the detriment of the general investing public. Several of these commentators suggest that, in addition to the expanded definition of professional trading account, the NASD should create a delay after an execution occurs in SOES, measured in seconds, to allow market makers to update their quotes.[21]

The Commission received 75 comment letters in response to the second proposal.[22] The majority of comment letters received favored the adoption of the proposed rule change.[23] The commentators that opposed the adoption of SR-NASD-91-17 made substantially the same arguments that were raised in response to SR-NASD-90-59.[24]

III. NASD Response to Comment Letters

The NASD submitted a response to the comment letters received on both proposed rule filings.[25] In its response to the comment letters received on the initial proposal, the NASD asserts that: SOES is an execution system, not a trading system; SOES does not replace telephone negotiation in the NASDAQ market; and professional traders always have been excluded from SOES because the system only is available for customer orders.

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[14] Twelve comment letters opposed the proposed rule change and fourteen comment letters favored the proposed rule change.

[15] See Appendix A for a list of comment letters received in SR-NASD-90-59.

[16] One commentator argues that some firms have in-house rules that limit the use of SOES and that such firms should not be restricted because of abusive practices by other firms.

[17] Of course, the obligation to honor one's quote is not limited to SOES. See Rule 11Ac1-1(c)(2), 17 CFR 240.11Ac1-1(c)(2) (1990).

[18] The phrase "pattern or practice" is used in the definition of professional trading account which originally was approved by the Commission in SR-NASD-88-43, Securities Exchange Act Release No. 26361 (December 15, 1988), 53 FR 51605 (December 22, 1988).

[19] The exposure limit is the number of shares the market maker is willing to buy or sell in SOES at a particular price. Each market maker establishes an exposure limit for each security in which he makes a market. The minimum exposure limit is defined as five times the minimum order size. There are three different maximum order sizes in SOES: 1,000,500, and 200. All NMS securities are in one of these three tiers. All Non-NMS securities have a maximum order size of 500 shares. However, in contrast to market makers in NMS securities, market makers in Non-NMS securities are not obligated to participate in SOES. See NASD Securities Dealers Manual, CCH ¶ 2451 ("SOES Rules").

[20] Commentators that oppose the proposed rule change suggest that the NASD consider lowering the minimum exposure limit from five times the tier size to the tier size itself. Some of the commentators that favor the proposed rule change also suggest that the NASD lower exposure limits, in addition to expanding the definition of professional trade. However, lowering the minimum exposure limit would have many implications of SOES. Once a market maker exhausts its exposure limit, it is permitted a 5 minute grace period to establish a new exposure limit. If the market maker does not establish a new exposure limit, it will be deemed to have withdrawn as a market maker and be subject to a penalty rendering it unable to make a market in that security on NASDAQ for 20 days. Lowering the minimum exposure limit to the tier size would require market makers to continually update their exposure limits. In addition, since a market maker would have a 5 minute grace period after one execution, if it was a 1,000 share order, the potential would exist for a period of time where a security had no SOES market makers available because they were all in the 5 minute grace period.

[21] Today, the Commission has approved an NASD rule to afford market makers 15 seconds between executions to update their quotations. See Securities Exchange Act Release No. Several commentators suggested that SR-NASD-90-59 is unnecessary if the proposed 15 second delay is approved. The NASD responded that the two proposals address different concerns and must be reviewed and acted upon separately by the Commission. While the Commission acknowledges that these rule proposals address the same general concern of protecting the small investor in SOES, the proposals address different aspects of this concern. Specifically, SR-NASD-90-59 is narrowly directed at eliminating the use of SOES by professional traders by expanding the definition of professional trading account, while the 15 second update period is a system change which does not apply solely to professional traders nor is it directly targeted at prohibiting professional trading accounts from using SOES. See also Securities Exchange Act Release No. approving the NASD's proposal which permits market makers to indicate order entry firms from which they agree to accept preferenced orders and to decline to accept preferencing from other order entry firms on a firm by firm basis.

[22] See Appendix A for a list of comment letters received in SR-NASD-91-17.

[23] Sixty-six comment letters supported the proposed rule change and nine comment letters opposed the proposed rule change.

[24] One of the commentators requested a hearing on the proposed rule filings. See letter from Sam Scott Miller, Orrick, Herrington & Sutcliffe, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991. See also letter from Junius W. Peake, Chairman, The Peake/Ryerson Consulting Group Inc., to Jonathan G. Katz, Secretary, SEC, dated August 14, 1991, which was written in support of the request for a hearing. The proposals were published in the **Federal Register** which provided interested persons the opportunity to express their views and arguments with respect to the proposals. The Commission, therefore, has met its statutory notice requirements under Section 19 of the Act. The Commission believes it is unnecessary to hold hearings on the proposals. Moreover, the Commission has received 5 comment letters, written by All-Tech or counsel for All-Tech. These letters were very detailed and comprehensive and given due consideration. See 15 U.S.C. 78s(b)(1) (1988). See also SR-NYSE-90-33, Securities Exchange Act Release No. 28915 (February 25, 1991), 56 FR 9036 (March 4, 1991), wherein a similar request was denied.

[25] *See* letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Jonathan G. Katz, Secretary, SEC, dated March 21, 1991 ("NASD letter"). See also letters from Stephen D. Hickman, Secretary, NASD, to Katherine England, Branch Chief, Branch of OTC Regulation, Division of Market Regulation, SEC, dated May 13, 1991 and July 12, 1991.

The NASD argues that SOES is designed to provide the benefits of automatic execution to a class of investors that may not otherwise have immediate access to a trader and that may therefore be forced to wait behind such professionals in order to have their small orders executed. In the NASD's view, if professional traders are permitted access to SOES, a primary purpose of the system is frustrated, since small investors would be competing with professional traders for time priority within the SOES environment. Those who make it their business to have direct access to the trader and first access to information always would have a significant advantage over the small investor. In effect, the benefits that SOES was designed to offer the small investor would be transferred to professional traders.

The NASD believes that small investors with limited access to market information should not be forced to compete with professional traders, who closely monitor market trends, in an automatic execution environment. the NASD argues that the commentators who oppose the proposal seek to protect individuals who often reside in a brokerage office, analyze trends and news, and place orders in person with a trader. Furthermore, the NASD argues that this extensive time investment in market activity easily distinguishes such persons from the small investors that SOES was designed to benefit. Indeed, the NASD stresses that the SOES Rules already prohibit members and registered representatives from using SOES to execute their own orders because of the information advantage these professionals enjoy over public customers.[26]

In response to the assertions that: (1) the proposed rule change is an arbitrary exclusion of a class of users which frustrates the ultimate market goal of enhanced liquidity and (2) market makers should be able to update their quotes quickly enough to reflect changes in the market, the NASD notes that it takes significantly less time to execute five orders through SOES than it takes for the market maker to see each order appear on the screen, evaluate whether it is appropriate to change its market, enter the necessary commands in the terminal, and see the updated quotation appear on the screen. The NASD states market makers currently are at a technological disadvantage to professional traders, because the system prices orders upon entry and thereafter delivers execution reports to the market maker. The NASD believes this process allows no time for the market maker to react to an execution and then transmit an updated quotation to the system. The NASD states that market makers willingly provide this immediacy in execution and pricing advantage to small investors but are understandably reluctant to offer these same advantages to orders that are generated by professional traders.

Some commentators argue that approval of the proposed rule change will lead to wider spreads and reduced liquidity.[27] These commentators believe professional traders add liquidity to markets and cause spreads to be tighter therefore by eliminating professional traders the proposed rule change will make the market less liquid and spreads will widen. In response, the NASD states that there is a positive relationship between risk of loss and spread; the higher the risk of loss associated with a security, the wider the spread. Unless professional traders are eliminated from SOES, market makers will continue to perceive a greater risk of loss.

The NASD argues that professional trading activities do not necessarily reduce spreads or add liquidity to the market. Market makers do not view transactions by professional traders as adding liquidity to the market, thereby providing a method of reducing ultimate risks and costs to market makers. Thus, the NASD concludes that narrower spreads would not necessarily result from– allowing professional traders continued access to SOES. In addition, the NASD notes that those who support the proposed rule change believe that forcing market makers to execute professional orders may result in wider spreads and reduced liquidity. Professional traders generally take advantage of fast moving markets, in which a market maker is most at risk.[28] Some commentators assert that if professional traders are not prohibited from using SOES, market makers will have to reduce their market making activities in SOES.

The NASD disagrees with commentators who assert that the new definition in the proposed rule change provides for unfair discrimination among classes of orders and that market makers should be forced to provide the benefits of immediate, automatic execution that SOES offers to anyone. In response to the assertion that other systems, such as the New York Stock Exchange's ("NYSE") Designated Order Turnaround ("DOT") System do not discriminate among orders, the NASD notes that while DOT may not limit order entry in the same manner that the proposed rule allows, it merely routes orders to the specialist's post on the floor of the exchange.[29] It is not an automatic execution system. Once the specialist receives the order, he or she executes the order at the market price. Specialists may update their markets following an execution, thus essentially eliminating the possibility of receiving rapid successive orders, such as occurs in SOES. Furthermore, the NASD replies that speed, guarantees of execution, and unlimited access are all offsetting benefits, each of which one market may choose to provide over another.

In response to the arguments that this rule change would place a burden on competition, the NASD argues that the Commission has never required that all market centers offer immediate, automatic electronic execution of all

[26] The NASD further explained that those individuals located at brokerage houses always will have an advantage over the traditional investor who is dependent on his broker to place orders through an order desk. The NASD stated that professional traders who watch market trends may favor volatility because it enhances the opportunity for them to profit from short term market swings. The NASD also stated that the commentators did not seem concerned with the benefits of increased depth and liquidity that execution guarantees offer to small investors.

[27] The NASD assumes this argument is premised on the notion that if these professionals are denied access to SOES they will not participate in the market. Without their participation the market will lose liquidity, resulting in wider spreads by market makers to compensate for the loss of liquidity. The NASD is not at all certain that by precluding professional trader access to SOES, overall liquidity will decrease, because those traders still have access to the NASDAQ market through other means. The NASD believes there is a strong likelihood that liquidity would increase if professional traders could not utilize SOES for their orders. The NASD asserts that liquidity would increase because market makers would not have to widen their spreads to offset the risk of multiple executions from professional traders before they can update their quotes.

[28] *See* NASD letter.

[29] Another commentator compared SOES to the Chicago Board Options Exchange's ("CBOE") Retail Automatic Entry System ("RAES"). RAES is used to execute automatically small customer orders in index and equity options on the CBOE. Orders on RAES for most options are limited to 10 contracts. The commentator argued that RAES, unlike SOES, does not discriminate between customers. The Commission does not find this comparison persuasive, especially as the systems are designed for different products and different trading structures. More important, the CBOE's decision as a marketplace regarding accessibility to its small order system should not limit the NASD's ability to make decisions on the accessibility of SOES. Like the NASD, the CBOE has limited the use of its small order system by public customers in response to abuse of the system. The CBOE amended Rule 6.8 to specify that "[f]or purposes of determining what a small customer order is, a customer's order cannot be split up such that its parts are eligible for entry into RAES." See SR–CBOE–89–27, Securities Exchange Act Release No. 28411 (September 6, 1990), 55 FR 37784 (September 13, 1990).

orders. If the Commission were to disallow the proposed rule change, the NASD argues that market makers would be in effect forced to execute orders in a manner not required of any other market center and that the Commission would be making a policy determination that disadvantaged the one class of investor least able to protect itself, the small investor.

Moreover, the NASD states that fair competition compels it to seek approval of the instant rule filing. The NASD argues that professional traders are attempting to protect their unrestricted access to a system designed for small investors who are otherwise without unfettered access to a market, especially in a volatile environment. The NASD concludes that speed and the guarantee of execution are special benefits that market makers are willing to offer small customers due to the nature of the trading activity that generally comes with those orders. The NASD believes the benefits the market makers are willing to offer must be seen as a reflection of the potential risk associated with the offer and that market makers simply cannot be required to extend the offer of unrestricted liquidity to professional traders.

In response to comment letters received on the second proposal, the NASD states that the proposed rule change is necessary because professional traders use SOES to execute one side of a day trade and effect the other side of the trade in another system such as SelectNet.[30] In this way they are able to circumvent the current definition of day trades. In response to allegations that the proposed rule discriminates against a class of active investors, the NASD asserts that orders from active investors are more appropriately handled outside of an automated execution environment designed to facilitate and ensure best execution for small investors.

IV. Discussion

The NASD continues to receive complaints from member firms alleging that professional traders are receiving multiple executions against market makers in SOES on the basis of news or while market makers are in the process of updating their quotes. The NASD believes there are certain order entry firms or market markers that trade through SOES on behalf of accounts over which the trader exercises discretion, thus using the system putatively for retail customers. In addition, the NASD states there are firms that allow customers to be present in trading rooms in close proximity to the trader or in direct contact with a trader through an open telephone line. These individuals may have access to electronic news and quotation services and place orders through SOES on news or before the last market maker at the inside quote has changed its quote to reflect market movement. Also, the NASD states that it has reason to believe that certain order entry firms or market makers that "pick off" SOES market makers may be executing short sales on negative news while relying on blanket representations from their clearing firms that they can arrange to borrow the particular security when covering the short position. Furthermore, the NASD believes professional traders are using SOES to execute automatically one side of a day trade against a market maker, while executing the other side of the day trade outside of SOES in order to elude the "five day trade" criteria in the current SOES rules.

The NASD argues that such practices are an abuse of SOES. The system was not created to allow professional traders to benefit from temporary discrepancies in the price of a security. The NASD remains concerned that, in response to the activity of professional traders, market makers may limit the number of securities in which they make markets, thereby affecting market liquidity. The system was designed to further the investment objectives of public customers, who typically have longer term trading goals than those of professional traders. The NASD believes that current SOES trading practices may undermine the integrity of the system and contravene SOES' major purpose, that is, the execution of small public orders.

The NASD emphasizes that the criteria set forth in the initial proposal will not be automatically applied to all active accounts; rather the Market Surveillance Department will make determinations only after a pattern or practice of "professional" use has been detected. While some of these criteria taken alone encompass legitimate practices, examined together they will be helpful guidelines in reviewing suspect trading activity in SOES. In these criteria the NASD has reserved to itself a degree of discretion which it believes is necessary to enforce the intent of this rule. Indeed, the NASD has attempted to address this problem previously with a more specific rule which did not accomplish the desired results. The intent of this rule is to trigger a review only after noting suspicious trading patterns or frequency of such activities. After analyzing trading in suspect accounts, Market Surveillance, in conjunction with the Chairman of the Market Surveillance Committee,[31] would be able to prohibit access to SOES for an account evidencing characteristics of professional trading.

The Committee has determined that the NASD's proposal should be approved. The record indicates that the proposal is consistent with the requirements of the Act, including in particular, the requirements of sections 11A and 15A, and the rules and regulations thereunder. Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: "(i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; (iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; and (iv) the practicability of brokers executing investors' orders in the best market." Section 15A(b)(6) of the Act requires that the rules of the NASD be designed to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and to "facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market," and to "protect investors and the public interest." Section 15A(b)(6) also requires that the rules of an association not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers." Section 15A(b)(8) requires that the rules of the NASD, in general, "provide a fair procedure for * * * the prohibition or limitation * * * of any person with respect to access to services offered by the association or a member thereof."[32]

[30] SelectNet is a service which permits broker-dealers to negotiate trades through the NASDAQ Workstation instead of by telephone.

[31] The NASD indicated in a response to comments, filed on May 13, 1991, that "[i]f the Chairman of the Market Surveillance Committee has been involved in a decision to designate an account as a professional trading account and the broker/dealer or customer wishes to appeal such a decision, then the Chairman of the Market Surveillance Committee would not participate in the appeal process and would not be a members [sic] of the appeal committee."

[32] Section 11A(b)(5) provides that any prohibition or limitation of any person in respect of access to services offered by a registered securities information processor ("SIP"), must not be unfairly

Continued

Section 15A(b)(9) requires that the rules of the association "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title." The proposed rule change is designed to further the purposes of these Sections. For the reasons discussed, the Commission believes that the proposal will properly limit certain practices inconsistent with the system's design, and that the proposal will further the goals outlined in the Act.

In spite of rules promulgated to prevent abuses in SOES, in particular SR–NASD–88–43, individuals and firms are continuing to find ways to use the system's design in a way characteristic of professional traders while carefully evading the definition of a professional trading account.[33] These traders are able to respond to news items that result in price moves and to execute against market makers who, because of the many securities in which they make markets, may not have had an opportunity to revise their quotations. These trades are generally liquidated shortly thereafter at the new market price, either over the phone or by using another system, thereby usually locking in a profit. These transactions impose substantial additional costs and risks on SOES market makers. Those costs and risks could cause market makers to reduce substantially the number of securities for which they make a market.

The Commission is concerned that a widespread reduction in market making could have a significant impact on the liquidity of the markets for NASDAQ/NMS securities. At the time the original definition of "professional trading account" was approved, the Commission determined that the NASD might, consistent with its statutory requirements, limit professional traders' access to SOES.[34] The Commission continues to believe that if the NASD determines to make a service like SOES available: Sections 15A(b)(6) and (b)(9) of the Act make it clear that the service must be made available to customers, issuers, brokers, and dealers on terms that neither discriminate unfairly, nor impose any unnecessary or inappropriate burden on competition. While the Commission recognizes that the rule discriminates between professional traders and non-professional traders and that some commentators have argued that the proposed rule could impose some burden on competition, the Commission believes that, on balance, the NASD proposal reasonably defines the phrase "professional trading account" with a view toward enhancing overall market liquidity and preserving the access of public investors to SOES.[35] Specifically, the Commission believes, based on the NASD comments, comments received in response to these proposals and the Commission's own oversight and expertise regarding the OTC market, that if professional traders are not restrained from using SOES, there is a reasonable likelihood that more market makers will cease making markets, spreads will widen and liquidity will be negatively impacted. Consequently, the Commission believes that any discrimination that will result from the approval of these rule changes is warranted in light of the increased protection afforded to investors, in particular small investors. In addition, to the extent these rule changes may be viewed as imposing a burden on competition, such burden is appropriate to counter the negative effects on the market place discussed above.[36]

The Commission also addressed arguments in 1988, similar to arguments made in connection with the present proposal, that without professional traders, market makers will not update their quotes in a timely manner and that a better solution to the problem at hand would be to reduce the size requirements for SOES. The Commission was and remains unconvinced by these arguments. For the reasons previously stated,[37] as well as those discussed herein, the Commission does not believe that providing professional traders access to a retail automatic execution service is necessary to achieve these goals in this specific context. Rule 11Ac1–1 under the Act requires quotes to be firm for NMS securities. In addition, the NASD rules require that all quotes disseminated through the NASDAQ system be firm.[38] Moreover, because various broker-dealers operate their own small order execution systems based on the best displayed quotations in NASDAQ, these broker-dealers have an economic incentive to ensure that quotes of an aberrant market maker do not remain out of line.[39]

With regard to such other alternatives as reducing the size requirements for SOES across-the-board, the Commission does not believe that reducing exposure limits, which affects the liquidity of the entire OTC market is preferable to focusing on the specific criteria which indicate abuse of SOES by professional trading accounts. The Commission believes it is far more important for the NASD to ensure that investors seeking to establish or liquidate a position have ready access to a liquid OTC market than to protect the ability of a small group of traders to profit from short-term pricing disparities.

In light of the numerous letters received by the Commission, it is evident that many market makers have experienced problems resulting from the use of SOES by professional traders. Based upon complaints it has received and its experience in this area, the NASD believes that the criteria set forth in SR–NASD–90–59 will be useful in determining if an account is a professional trading account. The Commission believes that, considered together, the factors the NASD has proposed are relevant and indicative of a professional trading account. The language of the proposed rule change provides the NASD with discretion to determine if an account is a professional trading account; the description of what constitutes a professional trading pattern informs members of the specific factors that will be considered to determine if an account is a professional

discriminatory and must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. NASDAQ, Inc. is a registered SIP.

[33] The NASD has filed these proposed rule changes because it believes the professional trader rule as it currently exists should be refined in order to eliminate certain unintended loopholes.

[34] *See* SR–NASD–88–43, Securities Exchange Act Release No. 26361 (December 15, 1988), 53 FR 51605 (December 22, 1988).

[35] Section 15A(b)(8) requires the NASD to provide a fair procedure for prohibiting or limiting a person's access to services offered by the Association or a member of the Association. This subsection may be implicated because the rule proposals, in effect, prohibit access to SOES by professional trading accounts. The Commission believes the NASD has set forth a fair procedure for prohibiting access because the rules set forth standards which the NASD shall apply in denying access. Moreover, the NASD is required to apply these standards fairly. *See infra* note 41.

[36] These proposed rule changes may in one context be viewed as enhancing competition because they facilitate the ability of broker-dealers to make markets in more securities. Such market making competition is itself an important goal of the Act because it helps ensure liquidity and facilitate competition among market makers. See Section 15A(b)(9). At the same time, the Commission recognizes the opposing views of the commentators that it limits their ability to "compete" by executing against displayed bids. Irrespective of which view is determined to be the more appropriate view of "competition," the Commission believes, on balance, that these rules are beneficial to the maintenance of liquid, reliable and efficient OTC markets and that any residual "burden on competition" is appropriate.

[37] *See* SR–NASD–88–43, Securities Exchange Act Release No. 26361 (December 15, 1988), 53 FR 51605 (December 22, 1988).

[38] See NASD Securities Dealers Manual, CCH ¶ 1819, § 2(b).

[39] Any broker-dealer operating a proprietary system is subject to executions at the best price, even though the quotation is out of line with the market.

trading account.[40] While the NASD will have discretion to determine exactly what is "excessive" and to determine based upon these factors which accounts are professional trading accounts, the NASD is required to act fairly and reasonably.[41] In addition, the refinement of professional trading to include day trades with one or both sides executed through SOES is a responsible modification to the rule to clarify that both a purchase and a sale need not be executed through SOES for the trade to be considered a day trade under the professional trading account rule.

Accordingly, the Commission finds, for the reasons described above, that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular, the requirements of Sections 11A and 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes, SR–NASD–90–59 and SR–NASD–91–17, be and hereby are, approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary

Appendix A—List of Comment Letters for SR–NASD–90–59

1. Mathew D. Grayer, to Jonathan G. Katz, Secretary, SEC, undated.
2. Stephen B. Grayer, to Jonathan B. Katz (sic), Secretary, SEC, dated January 15, 1991.
3. Steven Cohen, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1991.
4. Harvey Houtkin, to Jonathon B. Katz (sic), Secretary, SEC, dated January 16, 1991.
5. Mark D. Shefts, President, All-Tech Investment Group, Inc. to Jonathan G. Katz, Secretary, SEC, dated January 17, 1991.
6. Randall T. Ferguson, Jr., To Dear Sirs, dated January 17, 1991.
7. Stewart Rosen, to Jonathan G. Katz, Secretary, SEC, dated January 17, 1991.
8. Louis B. Todd, Jr., Chairman, John L. Watson, III, President, Security Traders Association, to Jonathan G. Katz Secretary, SEC, dated January 22, 1991.
9. Steven B. Schonfeld, Schonfeld Securities, Inc., to Secretary, SEC, dated January 28, 1991.
10. Dennis Marino, President, The Security Traders Association of New York, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 29, 1991.
11. Irving Weiser, President/CEO, James Bellini, Director of Trading, Dain Bosworth, Inc., to Jonathan G. Katz, Secretary, SEC, dated February 15, 1991.
12. Andrew Citrynell, President, Seaside Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated April 10, 1991.
13. Mark D. Shefts, President, All-Tech Investment Group, Inc., to Jonathan G. Katz, Secretary, SEC, dated April 30, 1991.
14. Richard M. Fong, President, Seattle Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated May 29, 1991.
15. Grace M. McLoughlin, Vice President, Chancellor, to Jonathan G. Katz, Secretary, SEC, dated May 30, 1991.
16. TJ Latona, President, Pittsburgh Securities Association Inc., to Jonathan G. Katz, Secretary, SEC, dated May 30, 1991.
17. Robert A. Mackie, Vice President, Trading, Allen & Co. Inc., to Jonathan, G. Katz, Secretary, SEC, dated June 3, 1991.
18. Hedi H. Reynolds, Managing Director NASDAQ/QTC Trading Department, Morgan Keegan, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.
19. Sam Scott Miller, Orrick, Herrington & Sutcliffe, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.
20. Ron Shinault, Memphis Security Dealers Association, to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.
21. Louis B. Todd, Jr., Partner Equity Trading, J.C. Bradford & Co., to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.
22. David D. Lewis, Chief Operating Officer, Manager Capital Markets, Ragen Mackenzie Inc., to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.
23. Patrick Fay, President, Nashville Securities Dealers Association, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.
24. Alexander H. Slivka, Senior Vice President, National Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.
25. Kenneth W. Perlman, General Councel, Mayer & Schweitzer, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 19, 1991.
26. Junius W. Peake, Chairman, The Peake/Ryerson Consulting Group Inc., to Jonathan G. Katz, Secretary, SEC, dated August 14, 1991

List of Comment Letters for SR–NASD 91–17

1. Dennis Marino, President, Sherwood Securities Corp., to Jonathan G. Katz, Secretary, SEC, dated May 28, 1991.
2. Dennis Marino, President, the Securities Traders Association of New York, Inc., to Jonathan G. Katz, Secretary, SEC, dated May 28, 1991.
3. Mark D. Shefts, President, All-Tech Investment Group, Inc., to Jonathan G. Katz, Secretary, SEC, dated May 29, 1991.
4. TJ Latona, President, Pittsburgh Securities Association, Inc., to Jonathan G. Katz, Secretary, SEC, dated May 30, 1991.
5. Grace M. McLoughlin, Vice President, Chancellor, to Jonathan G. Katz, Secretary, SEC, dated May 30, 1991.
6. R. Bruce Paterson, Managing Director, Morgan Stanley, to Jonathan G. Katz, Secretary, SEC, dated May 30, 1991.
7. Thomas W. Bock, Financial and Operations Principal, Wayne Grayson Capital Corp., to Jonathan G. Katz, Secretary, SEC, dated May 31, 1991.
8. John J. Hennessy, Vice President, Howard, Weil, Labouisse, Friedrichs, to Jonathan G. Katz, Secretary, SEC, dated May 31, 1991.
9. Louis J. Rich, Manager OTC Equity Trading, Punk, Ziegel & Knoell, to Jonathan G. Katz, Secretary, SEC, dated May 31, 1991.
10. Patrick Farrey, President, Security Taders Association of Chicago, Inc., to Jonathan Katz, Secretary, SEC, dated June 3, 1991.
11. Philip N. Benizzi, Senior Vice President, Dillon, Read & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated June 4, 1991.
12. Andrew Citrynell, President, Seaside Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 4, 1991.
13. Sandra J. Macdonald, President, Institutional Equity Traders Association (of Toronto), to Jonathan G. Katz, dated June 4, 1991.
14. David W. Wright, President, Security Traders Association of Washington, D.C. Inc., to Jonathan G. Katz, Secretary, SEC, dated June 5, 1991.
15. Peter Blowitz, president, Toluca Pacific Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated June 5, 1991.
16. Antonio J. Cecin, Director of Equity Trading, Piper, Jaffray & Hopwood, to Jonathan G. Katz, Secretary, SEC, dated June 5, 1991.
17. Pamela Fisk, Securities Trader, William K. Woodruff & Company Inc., to Jonathan G. Katz, Secretary, SEC, dated June 5, 1991.
18. Michael J. Schunk, President, First Westchester Securities, to Jonathan G. Katz, Secretary, SEC, dated June 6, 1991.
19. Leonard R. Hefter, Executive Vice President, Director of OTC Trading, Jefferies & Company, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.
20. Sam Scott Miller, Orrick, Herrington & Sutcliffe, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.
21. Hedi H. Reynolds, Managing Director, NASDAQ/OTC Trading Department, Morgan Keegan, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.
22. William B. Thomson, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.
23. Ralph J. Valentino, Managing Director, Troster Singer, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.
24. Ron Shinault, President, Memphis Security Dealers Association, to Jonathan G. Katz, Secretary, SEC, dated June 10, 1991.
25. Antonio Varela, President, Securities Traders Association of Florida, to Jonathan G. Katz, Secretary, SEC, dated June 11, 1991.
26. William P. Whalen, Managing Director, Furman Selz Inc., to Jonathan G. Katz, Secretary, SEC, dated June 11, 1991.
27. Peter Blowitz, President, Security Traders Association of Los Angeles, Inc., to

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[40] The NASD must determine an account is a professional trading account and notify the member that the account has been so classified prior to restricting the use of SOES for a designated account. See NASD Securities Dealers Manual, CCH ¶ 2463 ("SOES Rules").

[41] Of course, the Commission in its oversight capacity will scrutinize carefully application of the rule. Order entry firms and aggrieved persons have a right to a review under the Code of Procedure of a professional trading account designation. In addition, final action of the NASD may be reviewed by the Commission pursuant to Section 19(f) of the Act, 15 U.S.C. 78s(f) (1988), which requires the Commission to find that the rules of the NASD "are, and were applied in a manner consistent with the purposes of" the Act.

Jonathan G. Katz, Secretary, SEC, dated June 12, 1991.

28. John C. Giesea, Senior Vice President, Director NASDAQ/OTC Trading, Advest, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 12, 1991.

29. Aldo Parcesepe, Bear Stearns, to Jonathan G. Katz, Secretary, SEC, dated June 12, 1991.

30. Richard A. Bruno, Paine Webber, to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.

31. C. Denny Franklin, President, North Carolina Security Traders Association, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.

32. Richard A. Herrigone, Vice-President, Wm. V. Frankel & Co., to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.

33. Murray H. Sandler, Partner, Crowell, Weedon & Co., to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.

34. Louis B. Todd, Jr., Partner, Equity Trading, J.C. Bradford & Co., to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.

35. James M. Moffitt, Managing Director, Labe, Simpson & Co., to Jonathan G. Katz (sic), Secretary, SEC, dated June 14, 1991.

36. Norman Pessin, General Partner, Neuberger & Berman, to Jonathan G. Katz, Secretary, SEC, dated June 14, 1991.

37. Richard A. Sorrentino, Marc K. Suvall, UBS Securities Inc., to Jonathan G. Katz, Secretary, SEC, dated June 14, 1991.

38. John Avignone, Vice President, O–T–C Trading, Conning & Company, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

39. Antonio Concepcion, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

40. John D'Angelo, Vice President and Director Trading, Baird, Patrick & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

41. Patrick Fay, President, Nashville Securities Dealers Association, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

42. Daniel J. Guggenheim, President, Cleveland Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

43. William H. Howard, Jr., Vice President/Manager, Trading Dept., Van Kasper & Co., to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

44. David D. Lewis, Chief Operating Office, Manager Capital Markets, Ragen Mackenzie Inc., to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

45. Jerome S. Markowitz, Senior Managing Director, Montgomery Securities, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

46. Kenneth J. Wessels, Managing General Partner, Wessels, Arnold & Henderson, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

47. Robert C. King, Board Member, Georgia Securities Association, to Jonathan G. Katz (sic), Secretary, SEC, dated June 18, 1991.

48. Robert C. King, Senior Vice President and manager OTC Trading, Atlanta, James A. O'Niell, Senior Vice President and Manager OTC Trading, New York, The Robinson-Humphrey Company, Inc., to Jonathan G. Katz (sic), Secretary, SEC, dated June 18, 1991.

49. Mary-Alice C. Dennehy, President, Security Traders Assoc. of Connecticut, to Jonathan G. Katz (sic), Secretary, SEC, dated June 18, 1991.

50. James W. Tarantino, Managing Director, O–T–C, Hambrecht & Quist Inc., to Jonathan G. Katz, Secretary, SEC, dated June 18, 1991.

51. Keith Balter, Manager OTC Dept., Weeden & Co., to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

52. Steven Cohen, to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

53. John F. Guion, President, Association of Publicly Traded Companies, to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

54. Darren J. Moschella, Vice President OTC Trading, Fox-Pitt, Kelton Inc., to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

55. Stephen J. Paluszek, Exec. Vice President, M.A. Schapiro & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

56. Sharon J. Shumway, Vice President, Director of Compliance, Pierce Refsnes, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

57. Alexander H. Slivka, Senior Vice President, National Securities Corp., to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

58. Daniel P. Son, First Southwest Co., to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

59. Emanuel E. Geduld, President, John E. Herzog, Chairman/CEO, Herzog Heine Geduld, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

60. William F. Haneman, Jr., Senior Vice President and Manager OTC Trading, Legg Mason, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

61. Mark D. Madoff, Bernard L. Madoff Investment Securities, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

62. Robert O. McCabe, First Vice President, Associate General Counsel, Shearson Lehman Brothers, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

63. Michael Murphy, Senior Director Trading, Morgan Grenfell Asset Management, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

64. Henry Rudy, President, Dallas Security Dealers Association, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

65. John L. Watson III, President, Louis B. Todd, Jr, Chairman, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

66. Larry Johnson, Vice President, Southwest Securities Inc., to Jonathan G. Katz, Secretary, SEC, dated June 21, 1991.

67. Steven T. Newby, President, Newby & Company, to Jonathan G. Katz, Secretary, SEC, dated June 21, 1991.

68. Hugh J. Quigley, Managing Director, Merrill Lynch, to Jonathan G. Katz, (sic), Secretary, SEC, dated June 21, 1991.

69. Edward M. Posner, Managing Director, Cowen, to Jonathan G. Katz, Secretary, SEC, dated June 22, 1991.

70. Malcolm C. Selver, Director OTC Department, Salomon Brothers Inc., to Jonathan G. Katz, Secretary, SEC, dated June 24, 1991.

71. Gregory L. Lemasters, Vice President, George K. Baum & Co., to Jonathan G. Katz, Secretary, SEC, dated June 24, 1991.

72. James E. Brucki, Jr., Vice President, J.J.B. Hilliard, W.L. Lyons, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 1, 1991.

73. James E. Brucki, Jr., Chairman, North Carolina Security Traders Association, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 1, 1991.

74. Kenneth W. Perlman, General Counsel, Mayer & Schweitzer, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 19, 1991.

75. Junius W. Peake, Chairman, The Peake/Ryerson Consulting Group Ind., to Jonathan G. Katz, Secretary, SEC, dated August 14, 1991.

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[Release No. 34–29810; File Nos. SR–NASD–91–18, SR–NASD–91–26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Changes Creating A Fifteen Second Quotation Update Period and Allowing Market Makers to Decline Preferencing by Order Entry Firms on the Small Order Execution System

October 10, 1991.

Introduction

The National Association of Securities Dealers, Inc. ("NASD") has filed with the Securities and Exchange Commission ("Commission" or "SEC") two proposed rule changes to the NASD's Rules of Practice and Procedure for the Small Order Execution System ("SOES" and "SOES Rules"). As described below, the proposals: (1) Permit SOES market makers a period of time to update their quotations following a prior execution and (2) allow market makers to indicate from which order entry firms they will accept preferenced orders. This order approves both rule filings.[1]

SR–NASD–91–18: Quotation Updated Period

On April 18, 1991, the NASD submitted to the Commission a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder.[3]

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[1] The Commission today is also approving a proposal to amend the definition of "professional trading account" (SR–NASD–90–59) and a proposal to expand the definition of "day trade" (SR–NASD–91–17). See Securities Exchange Act Release No. 29809.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1991).

The proposal amends the SOES Rules [4] to permit market makers a period of time in which to update quotations following an execution before being required to execute another transaction through SOES on the same side in the same security.[5]

Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29182, May 9, 1991) and by publication in the **Federal Register** (56 FR 22496, May 15, 1991).

SOES was designed to provide an efficient and economical facility for the execution of customer orders in NASDAQ securities that meet the SOES size limits.[6] It offers an alternative to traditional telephone contact and negotiation with market makers.[7] SOES provides automatic execution of customer orders with NASDAQ market makers at the best available market price. SOES automatically reports the trade data to the clearing corporations, in contrast to non-SOES trades, where the trader must transmit the information to the clearing corporation. SOES reduces paperwork and limits the need for telephone contact, which is especially useful in active markets. Since the system was developed to facilitate the execution of limited size orders, the Association has taken steps in the past to ensure market maker presence in the system [8] and to prohibit its misuse by professional traders.[9]

In SR–NASD–91–18, the NASD is proposing a period of time (*i.e.*, 15 seconds) [10] following an execution to allow a market maker to update a quotation before being obliged to execute a second unpreferenced [11] transaction in the same security on the same side through SOES.[12] Currently, SOES can execute almost instantaneously multiple orders against a market maker until the market maker's exposure limit in the security is exhausted.[13] SOES market makers are permitted to establish exposure limits anywhere from five times the SOES tier size (*e.g.*, 1,000, 2,500, or 5,000 shares for securities trading at the 200, 500, and 1,000 share tier levels, respectively) up to an exposure limit of 999,999 shares.[14] Once a market maker's exposure limit is exhausted the market maker is suspended from SOES and provided a grace period within which to update its market; [15] any SOES orders would then be executed as if they were unpreferenced orders against the next market maker in the SOES rotation. Although this feature assures liquidity in the NASDAQ issues traded through SOES, many market makers have expressed concern that it does not allow enough time to update their quotations in response to executions occurring through the system.

Following receipt of an execution report of an unpreferenced purchase or sale through SOES,[16] a market maker will have a period of time (15 seconds) to update its quote prior to executing any subsequent transaction on the same side of the market at the same price. Not all orders entered through SOES will be affected by the proposed amendment. For example, if a market maker has executed a sale, and subsequently receives a purchase order, SOES will execute that order without delay. Further, if a customer order is executed against the market maker's bid and the market maker subsequently updates its offer or its size in the security, the quotation update period will expire immediately because any change in the market maker's quotation terminates the update period. Executions also will resume against the market maker after the update period has elapsed, regardless of whether the quote has been changed.

Orders would continue to be executed against other market makers in the security during the window and executions will continue to occur against all market makers once the inside quotation (best published bid and offer) is changed. The period to update a quotation will not apply to a market maker that is locking or crossing the market in a security, as SOES has been configured to execute automatically against the locking or crossing market maker in order to correct the erroneous quotations.[17]

In addition, the language of the SOES Rules would be clarified to indicate that preferencing is voluntary—market makers would be able to decline preferencing overall or by individual security, and the orders preferenced to market makers that have declined preferencing would be executed as if they were unpreferenced, that is, against any market maker at the best bid or

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[4] Specifically, the rule filing amends Sections (c)(2)(A) and (c)(3) (A) and (B) of the SOES Rules. NASD Securities Dealers Manual, SOES Rules, CCH ¶ 2460.

[5] On July 9, 1991, the NASD filed Amendment No. 1 to the proposed rule change in File No. SR–NASD–91–26. The amendment permits market makers to have a period of time in which to update their quotations before being required to execute another transaction in the same security only when the transaction is unpreferenced. Orders that are executed subject to a preferencing agreement between a market maker and an order entry firm will be executed without delay. *See infra* discussion of File No. SR–NASD–91–26.

[6] See File No. SR–NASD–84–26, Securities Exchange Act Release No. 21433 (October 29, 1984), 49 FR 44042 (November 1, 1984).

[7] See File No. SR–NASD–90–59, Securities Exchange Act Release No. 28709 (December 19, 1990), 55 FR 53224 (December 27, 1990) and Securities Exchange Act Release No. 29809, providing a more detailed background on SOES.

[8] See File No. SR–NASD–88–1, Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22594 (June 16, 1988), mandating participation in SOES by NASDAQ market makers in National Market System securities. This was done to address the problems that occurred during the 1987 market break when large numbers of market makers withdrew from SOES making it necessary for many SOES eligible trades to be executed manually.

[9] See File No. SR–NASD–88–43, Securities Exchange Act Release No. 26361 (December 15, 1988), 53 FR 51605 (December 22, 1988). On August 5, 1991, the Commission received a Petition to Institute Rulemaking to delete the prohibition against use of SOES by professional traders previously adopted in SR–NASD–88–43.

[10] The NASD is establishing the time period at 15 seconds and has stated that it may modify the period with appropriate notice to SOES participants. Any change in the time period must be submitted to the Commission for review pursuant to section 19(b) of the Act.

[11] SOES orders are executed on a rotational basis against all market makers offering the "inside" quotation. In addition, orders may be entered into SOES and designated for routing to a particular market maker. This type of order entry is referred to as "preferencing." If this is done, the order is executed at the best price for that market maker's account even if its quote is not at the best. At present, market makers are permitted to indicate for which securities they are willing to accept preferenced orders. If an order is designated to a market maker that does not accept preferenced orders, the order is executed against the next available market maker in the rotation.

[12] As of the date of this order, the Association has not completed the systems changes necessary to implement the proposed enhancements to SOES. Although the Commission, by this order, has approved the proposed rule changes, the NASD is not permitted to implement the enhancements to SOES unless and until it: (1) Submits a system change notification consistent with the Commission's Automation Review Policy II (see Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991); (2) successfully completes functionality, capacity and stress testing of the system changes; and (3) provides the Commission staff with representations regarding the effective completion of those tests.

[13] Although at present SOES has the capability to process between 12 and 14 executions per second, on average, only 4 transactions are processed every 15 seconds.

[14] See NASD Securities Dealers Manual, SOES Rules, Section (c)(2), CCH ¶ 2460.

[15] The grace period is currently 5 minutes. See File No. SR–NASD–88–1, Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22594 (June 16, 1988).

[16] The NASD estimates that, at present, approximately 60% of all executions in SOES are preferenced to specific market makers. See, infra, discussion of File No. SR–NASD–91–26, NASD proposal to allow market makers to decline preferenced orders from specific order entry firms.

[17] NASD Securities Dealers Manual, SOES Rules, Section (c)(2)(C), CCH ¶ 2460.

offer in rotation.[18] Execution reports would be generated and transmitted to the order entry firms immediately after the execution has taken place.

The Commission received 72 comment letters on the proposed rule.[19] The majority of the commentators were in favor of the proposal. Many of them cited the fact that SOES was designed for small retail orders and stated that continued use by "professional traders" would hinder the efficiency and liquidity of the SOES marketplace. For example, Morgan Keegan, Inc.[20] stated that use of SOES by professional traders who employ technology to execute orders in rapid succession means that small retail customers have little opportunity for an equal execution. Almost all of the commentators in favor of the update period concept felt that market makers that extend liquidity to SOES were being unnecessarily and unfairly injured by individuals and firms who were not executing transactions on behalf of retail customers. A few commentators indicated that they had noticed a subsequent decrease in the number of market makers in certain frequently "hit" securities and a corresponding decline in liquidity. Additionally, a few commentators have observed market makers widening their spreads as a defense against rapid executions, which led to a notable increase in volatility. Overall, commentators in favor of the proposal felt that implementation of a 15 second update period would provide adequate time for market makers to react to trades being executed throughout the system by allowing for a "human" response factor.

Several commentators opposed the rule change to some degree. For example, the letter from All-Tech Investment Group, Inc.[21] ("All-Tech") expressed concern that the proposed rule would nullify the status of SOES as an automated execution system. All-Tech further argues that because executions would no longer be immediate, market makers would be able to "ward off unwanted executions." Most of the commentators that are opposed to the NASD proposal felt that the proposed rule would discriminate against active investors trading for their own account and that the reason market makers were complaining about SOES was that they were unwilling to execute orders at their quoted prices, as required by the SOES Rules, in order to ensure themselves greater profitability. Seaside Securities, Inc.[22] ("Seaside Securities") wrote that the proposed rule itself is reasonable, but that it vests undue discretion with the NASD to modify unilaterally the SOES execution update period. Seaside Securities indicated that even if a modification of the update period was filed with the Commission pursuant to the procedures provided under Rule 19b–4,[23] those procedures permit a proposal to become effective upon filing or for filings to be approved on an accelerated basis.

By letter, dated July 12, 1991, the NASD responded to the comments against adoption of the proposed rule change.[24] First, in response to the concern that a 15 second update period would nullify the status of SOES as an automated execution system, the NASD explained that the 15 second interval only will come into play after an execution has taken place and only will serve the purpose of affording market makers an opportunity to react to a prior execution. Further, the NASD stated that SOES will continue to execute automatically orders received against market makers in rotation at the inside NASDAQ quotation. Thus, the NASD believes that the automated features of SOES execution will remain undiminished.

Second, in response to concerns that the proposed rule change will enable market makers to "ward off unwanted executions," the NASD responded that market makers always are ready and willing to trade at their displayed quotations.[25] The NASD explained that SOES does not allow for negotiation of orders, but merely routes reports of executions to market makers after they have occurred. The NASD states that the 15 second update period merely will serve to enable market makers to adjust their market positions in response to executions.

Third, in response to criticism that the update period serves to discriminate against active investors trading for their own account, the NASD countered that SOES was designed to accommodate small orders for public customers, not active investors who monitor news screens and place orders for executions before market makers can react to news developments. Further, the NASD argues that the public customer with a small order is at an informational and technological disadvantage in relation to active investors and that the proposed rule is designed to protect small order public customers from these disadvantages vis-a-vis active investors.

In response to the concerns of Seaside Securities regarding the NASD's authority to modify unilaterally the SOES execution update period, the Commission notes that any future proposal of the NASD to amend the update period proposed herein must be filed in accordance with section 19(b) of the Act.[26] Seaside Securities expressed concern that the NASD might attempt to modify the 15 second update period by filing under section 19(b)(3)(A) of the Act, which allows a proposed rule change to become effective upon filing (*i.e.*, prior to publication of notice thereof). The Commission notes, however, that proposals for which immediate effectiveness is sought under the Act[27] must meet certain narrowly specified grounds. If these requirements are not met, the proposed rule would require notice and comment.

The NASD believes that proposing a period of time in which a market maker may update its quotation following an automatic execution essentially beyond its control is well within the dictates of the SEC's "Firm Quote Rule."[28] Pursuant to the Firm Quote Rule, brokers and dealers are required to execute orders to buy and sell securities at their published quotations unless the broker-dealer is communicating a revised bid or offer to the NASD or has effected a transaction in the security and is updating its quotation. NASDAQ market makers are required to maintain firm quotes and be willing to execute trades at their stated quotations. The NASD believes that allowing time between automated executions on SOES, while still retaining the automated features of SOES, strikes an appropriate balance between the customer's desire for efficiency and immediacy in executions, and the NASD's responsibility to operate a system that provides a fair, responsive trading environment for market makers. Further, the NASD believes that the

[18] See, *infra*, discussion of File No. SR–NASD–91–26, which, in part, amends the language proposed in SR–NASD–91–18 regarding preferencing. In addition to SR–NASD–91–18, which clarifies that market makers may decline preferencing overall or by individual security, the rule proposed in SR–NASD–91–26 will allow a SOES market maker to indicate order entry firms with which it has an agreement to accept preferenced orders.

[19] Of the 72 comment letters received, 50 were from securities related firms and broker-dealers, 7 from trade associations, 3 from individuals, 1 from a law firm, and 1 from a consulting group. See Appendix A for a list of commentators to the proposed rule changes affecting SOES.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] 17 CFR 240.19b–4 (1991).

[24] See letter from Stephen D. Hickman, Secretary, NASD, to Katherine England, Branch Chief, SEC, dated July 12, 1991.

[25] Also, cf. the SEC's "Firm Quote Rule." 17 CFR 240.11Ac1–1(c)(3)(ii) (1991).

[26] 15 U.S.C. 78s(b) (1988).

[27] 15 U.S.C. 78s(b)(3)(A) (1988).

[28] 17 CFR 240.11Ac1–1(c)(3)(ii)(1991).

instant proposal for a quotation update period will not diminish market makers' responsibility to participate in SOES or to post mandatory size in quotations and that the update period will provide market makers time to react to an execution and adjust their markets, if appropriate, to reflect an execution or altered market conditions.

In sum, the NASD believes the proposed rule change in File No. SR-NASD-91-18 is consistent with section 15A(b)(6) of the Act [29] and Rule 11Ac1-1. Section 15A(b)(6) requires that the rules of the NASD be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." SOES operates to facilitate automated customer executions, and the NASD believes that the proposed amendments will benefit public customers by curbing misuse of the system. In addition, the NASD believes that a fixed period for quotation updates through SOES is fully in compliance with the requirements of the Firm Quote Rule.

SR-NASD-91-26: Preferencing of SOES Orders

On May 31, 1991, the NASD submitted a proposed rule change to the Commission pursuant to section 19(b)(1) of the Act [30] and Rule 19b-4 thereunder.[31] The proposal amends the SOES Rules [32] to allow market makers to decline preferencing by order entry firms.[33]

Notice of the proposed rule change together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29339, June 19, 1991) and by publication in the **Federal Register** (56 FR 29299, June 26, 1991). No comment letters were received by the Commission.

The purpose of the NASD's filing is to amend the SOES Rules to permit preferencing of orders to market makers only when those market makers agree in advance to be preferenced by the particular broker-dealer. SOES provides automated execution of small customer orders in two ways—an unpreferenced order will be executed against any market maker who is at the inside quote in the security, or a preferenced order may be routed to a particular market maker in the stock and will be executed at the best posted bid or offer in the system (the inside quote).

Preferencing orders to specific market makers originally was permitted in SOES to accommodate the established order routing practices in the market, so that order entry firms and market makers could continue their order routing arrangements using SOES. Because any order entered into SOES is assured the "best" market price for execution, preferenced orders are executed at the inside bid or offer regardless of the price being quoted by the market maker receiving the order. This assurance of "price protection" to all orders entered into SOES was and is a key element in the operation of the system. Currently, market makers may decide to accept preferencing on a security-by-security basis, but if a market maker elects to accept preferencing in a stock, it is required to accept all orders preferenced to it from all order entry firms and must execute any such preferenced order at the inside quotation. Problems occur in SOES when one market maker is slow in updating a quotation and preferenced market makers are required to execute trades at the quotation of the market maker that is not monitoring the market. This occurs in fast moving markets, where the market maker's quote that has not been updated establishes an inside quotation not truly reflective of the changing market or of the other market makers' updated quotations. An order sent to a preferenced market maker must be executed at this inside quotation, notwithstanding the fact that the market maker may have changed its quotes in a timely manner.

The NASD states that it has received reports that some order entry firms preference market makers purposefully to cause executions at the untimely inside quotation, thus contravening the original intent of the preferencing allowance. To remedy this situation, the NASD is recommending that market makers be provided the same flexibility to accept preferenced executions on a firm-by-firm basis as is now provided with the security-by-security criteria currently in place. With this enhanced flexibility, market makers would execute preferenced orders at the inside quotation from order entry firms that they have agreed to acknowledge, and the system would treat all other preferenced orders on an unpreferenced basis.

Many broker-dealers have order routing arrangements with other broker-dealers whereby they agree in advance to send their order flow to a specific firm. With the 15 second update period proposed in File No. SR-NASD-91-18, preferenced orders might work to the disadvantage of customers. For example, if a firm had an order routing agreement and it received several orders to purchase the same security from its customers at the same time, execution of the customers' orders would be delayed because, after the first order was routed to the market maker, there would be a 15 second delay between each execution as provided for by this new rule. The NASD, however, has indicated that it will program SOES to eliminate the 15 second delay in connection with preferenced orders.[34] Without this amendment, the 15 second delay between executions could have the potential to severely delay customer orders, which could result in the customer receiving an inferior execution.

The NASD believes the proposed rule change in File No. SR-NASD-91-26 is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *." SOES operates to facilitate automated executions of customer orders and the NASD believes the proposed amendment will curb misuse of the system by preventing executions against market makers at a price not reflective of their market position.

Discussion

As a general matter, the Commission is concerned about limitations on the use of technology such as SOES. Indeed, the Act specifically contemplates that advances in technology create more efficient and effective markets.[35] Nevertheless, the approaches sought by the NASD in both SR-NASD-91-18 and SR-NASD-91-26 are reasonable and are consistent with the requirements of the Act and the rules and regulations promulgated thereunder. In particular the Commission has determined that the

[29] 15 U.S.C. 78*o*-3 (1988).

[30] 15 U.S.C. 78s(b)(1) (1988).

[31] 17 CFR 240.19b-4 (1991).

[32] Specifically, the rule filing amends Section (c)(3)(B) of the SOES Rules. NASD Securities Dealers Manual, SOES Rules, CCH ¶ 2460.

[33] On July 9, 1991, the NASD filed Amendment No. 1 to the instant proposed rule change. The amendment clarifies that orders executed on SOES subject to a valid preferencing agreement between a market maker and an order entry firm will not be subject to the 15 second update period proposed in File No. SR-NASD-91-18.

[34] See Amendment No. 1 to File No. SR-NASD-91-26, filed July 9, 1991.

[35] See sections 11A(a)(1) (B) and (D) of the Act, 15 U.S.C. 17k-1 (1988).

proposed rules are consistent with section 15A(b)(6) of the Act, which requires that the NASD's rules be designed to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade", to facilitate "transactions in securities, to remove impediments to and perfect the mechanism of a free and open market", to "protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers * * *." The proposed rules also are consistent with section 15A(b)(9) of the Act [36] which requires that the NASD's rules "do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of" the Act.

SOES is designed to execute retail customer orders of a limited size. Its continued use by individuals and firms other than on behalf of these customers has led to significant difficulties for SOES market makers. Many of the market makers that commented on the proposed rules indicated that they had experienced significant financial detriment by making markets in NASDAQ securities due to rapid executions on SOES without the ability to update their quotations or the ability to decline preferencing by order entry firms. Additionally, several market makers indicated that the financial burden they face from being unable to update their quotations between executions on SOES affects their willingness to make markets.

These difficulties could be alleviated, at least in part, by the introduction of preferencing on a firm by firm basis and an update period between unpreferenced executions. The Commission believes that the rules proposed herein strike an appropriate balance between the need to protect the stability and liquidity of SOES market makers and the desire to maintain SOES as a means for small retail investors to receive fair and timely trade executions.

Further, the Commission believes that the two instant rule filings do not create unfair discrimination nor do they impose unnecessary burdens on competition. If professional traders are permitted to continue their access to SOES, small investors will be competing with professional traders for time priority on SOES. The Commission does not believe that the NASD unfairly discriminates or imposes an unnecessary or inappropriate burden on competition by concluding that investors with limited size orders and limited access to market information should not be forced to compete with professionals who make it their business to closely monitor market trends, in an automatic execution environment.[37]

The rule providing for a 15 second delay raises no specific concern about unfair discrimination. During the 15 seconds, there will be no executions of any transactions on the same side of the market at the same price by the particular market maker; hence there is no discrimination. The Commission, however, acknowledges that the proposed rule change in File No. SR-NASD-91-26 permits market makers to select among order entry firms by indicating from which order entry firms they will accept preferencing; moreover, this rule may be construed as placing a burden on competition because some order entry firms may be unable to establish preferencing agreements, thereby potentially putting them at a disadvantage vis-a-vis other firms with preferencing agreements. The Commission has determined that this ability to select among order entry firms is not unfair because it protects market makers from abuse by order entry firms which deliberately preference market makers in order to take advantage of an untimely inside quotation. The Commission also has determined that any burden on competition which may result is not inappropriate because it is offset by the likelihood that market makers, if not permitted to accept preferencing on a firm-by-firm basis, will cease making markets in certain securities or determine not to accept preferenced orders at all, potentially leading to increase spreads, reduced liquidity, and reduced competition among market makers.

Additionally, the Commission believes that the proposed amendments are consistent with the requirements of the SEC's Firm Quote Rule which requires that brokers and dealers execute orders to buy and sell securities at their published quotes unless communicating a revised bid or offer or unless updating their quotations in response to an execution. The proposed 15 second update period in no way diminishes the requirement that market makers maintain firm quotes and be willing to execute at those quotes. The 15 second update period only will be in effect in response to an execution and only serves to provide market makers time to react to that execution and adjust their positions, if necessary. Market makers will continue to be required to execute customer orders quickly and efficiently.

The Commission also believes that the NASD has responded adequately to the concerns of those commentators who oppose the proposed quotation update period. The 15 second update period will permit the market maker who has effected a trade a short period of time to consider the need to update his quotation. Without this ability, as well as the ability to decline preferencing from order entry firms, market makers will be less willing to continue their commitment to SOES. Finally, limitation of the 15 second update period to unpreferenced orders will lessen any impact the update period may have on transactions executed on SOES.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 15A(b)(6) and 15A(b)(9) and the rules and regulations thereunder and Rule 11Ac1-1. The Commission believes, for the reasons stated above, that the proposed rule change in File Nos. SR-NASD-91-18 and SR-NASD-91-26 satisfy these statutory requirements.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and hereby are, approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—List of Comment Letters for SR-NASD-91-18

1. Mark D. Shefts, President, All-Tech Investment Group Inc., to Jonathan G. Katz, Secretary, SEC, dated May 22, 1991.
2. Dennis Marino, President, Sherwood Securities Corp., to Jonathan G. Katz, Secretary, SEC, dated May 28, 1991.
3. Dennis Marino, President, Security Traders Association of New York, Inc., to Jonathan G. Katz, Secretary, SEC, dated May 28, 1991.
4. R. Bruce Paterson, Managing Director, Morgan Stanley & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated May 30, 1991.
5. TJ Latona, President, Pittsburgh Securities Association, to Jonathan G. Katz, Secretary, SEC, dated May 30, 1991.
6. Louis J. Rich, Manager OTC Equity Trading, Punk, Ziegel & Knoell, to Jonathan G. Katz, Secretary, SEC, dated May 31, 1991.
7. Thomas W. Bock, Financial and Operations Principal, Wayne Grayson Capital Corp., to Jonathan G. Katz, Secretary, SEC, dated May 31, 1991.

[36] 15 U.S.C. 78o-3 (1988).

[37] These proposed rule changes, along with the filings in File Nos. SR-NASD-90-59 and SR-NASD-91-17, may in one context be viewed as enhancing competition because they facilitate the ability of broker-dealers to make markets in more securities. Such market making competition is itself an important goal of the Act because it helps ensure liquidity and facilitate competition among market makers.

8. John J. Hennessy, Vice President, Howard, Weil, Labouisse, Friedrichs, Inc., to Jonathan G. Katz, Secretary, SEC, dated May 31, 1991.

9. Patrick Farrey, President, Security Traders Association of Chicago, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 3, 1991.

10. Robert A. Mackie, Vice President, Allen & Company, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 3, 1991.

11. Phillip N. Benizzi, Senior Vice President, Dillon, Read & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated June 4, 1991.

12. Andrew Citrynell, President, Seaside Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 4, 1991.

13. Sandra J. Macdonald, Institutional Equity Traders Association (of Toronto), to Jonathan G. Katz, Secretary, SEC, dated June 4, 1991.

14. David W. Wright, President, Security Traders Association of Washington, DC., Inc., to Jonathan G. Katz, Secretary, SEC, dated June 5, 1991.

15. Pamela Fisk, Securities Trader, William K. Woodruff & Company, to Jonathan G. Katz, Secretary, SEC, dated June 5, 1991.

16. Peter Blowitz, President, Toluca Pacific Securities, to Jonathan G. Katz, Secretary, SEC, dated June 5, 1991.

17. Antonio J. Cecin, Director, Piper, Jaffray & Hopwood, to Jonathan G. Katz, Secretary, SEC, dated June 5, 1991.

18. Leonard R. Hefter, Executive Vice President, Jefferies & Company, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.

19. Sam Scott Miller, Orrick, Herrington & Sutcliffe, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.

20. William B. Thomson, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.

21. Ralph J. Valentino, Managing Director, Troster Singer, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.

22. Hedi H. Reynolds, Managing Director, Morgan Keegan, to Jonathan G. Katz, Secretary, SEC, dated June 7, 1991.

23. Ron Shinault, President, Memphis Security Dealers Association, to Jonathan G. Katz, Secretary, SEC, dated June 10, 1991.

24. William P. Whalen, Managing Director, Furman Selz, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 11, 1991.

25. Antonio Varela, President, Security Traders Association of Florida, to Jonathan G. Katz, Secretary, SEC, dated June 11, 1991.

26. Aldo Parcesepe, Senior Managing Director, Bear Sterns & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated June 12, 1991.

27. John C. Giesea, Senior Vice President, Advest, Inc., to Jonathan G. Katz, Secretary, SEC, June 12, 1991.

28. Peter Blowitz, President, Security Traders Association of Los Angeles, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 12, 1991.

29. Murray H. Sandler, Partner, Crowell, Weedon & Co., to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.

30. C. Denny Franklin, President, North Carolina Security Traders Association, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.

31. Richard A. Herringbone, Vice-President, Wm. V. Frankel & Co., to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.

32. Louis B. Todd, Jr., Partner, J.C. Bradford & Co., to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.

33. Richard A. Bruno, Managing Director, Paine Webber Inc., to Jonathan G. Katz, Secretary, SEC, dated June 13, 1991.

34. Norman Pessin, General Partner, Neuberger & Berman, to Jonathan G. Katz, Secretary, SEC, dated June 14, 1991.

35. Richard A. Sorrentino, Marc K. Suvall, UBS Securities Inc., to Jonathan G. Katz, Secretary, SEC, dated June 14, 1991.

36. Patrick Fay, President, Nashville Securities Dealers Association, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

37. Kenneth J. Wessels, Managing General Partner, Wessels, Arnold & Henderson, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

38. Antonio Concepcion, Member of STANY, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

39. Daniel J. Guggenheim, President, Cleveland Securities Traders Association, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

40. Pamela L. Small, First Vice President, Lehman Brothers, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

41. John D'Angelo, Vice President and Director, Baird, Patrick & Co., Inc. to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

42. William H. Howard, Jr., Vice President/Manager, Van Kasper & Co., to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

43. David D. Lewis, Chief Operating Officer, Ragen MacKenzie, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

44. John Avignone, Vice President, Conning & Company, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

45. Jerome S. Markowitz, Senior Managing Director, Montgomery Securities, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1991.

46. James W. Tarantino, Managing Director, Hambrecht & Quist, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 18, 1991.

47. Robert C. King, Georgia Securities Association, to Jonathan G. Katz, Secretary, SEC, dated June 18, 1991.

48. Robert C. King, Senior vice President, James A. O'Neill, Senior Vice President, The Robinson-Humphrey Company, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 18, 1991.

49. Mary-Alice C. Dennehy, President, Security Traders Association of Connecticut, to Jonathan G. Katz, Secretary, SEC, dated June 18, 1991.

50. Darren J. Moschella, Vice President OTC Trading, Fox-Pitt, Kelton, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

51. Sharon J. Shumway, Vice President, Rauscher Pierce Refsnes, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

52. Daniel P. Son, Executive Vice President, First Southwest Company, to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

53. Steven Cohen, to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

54. Stephen J. Paluszek, Executive Vice President, M.A. Schapiro & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

55. John F. Guion, President, Association of Publicly Traded Companies, to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

56. Alexander H. Slivka, Senior Vice President, National Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

57. Keith Balter, Manager OTC Dept., Weedon & Co., to Jonathan G. Katz, Secretary, SEC, dated June 19, 1991.

58. William F. Haneman, Jr., Senior Vice President, Legg Mason Wood Walker, Inc., to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

59. Henry C. Rudy, President, Dallas Security Dealers Association, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

60. John E. Herzog, Chairman/CEO, Emanuel E. Geduld, President, Herzog, Heine Geduld, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

61. Robert O. McCabe, First Vice President, Shearson Lehman Brothers, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

62. Mark D. Madoff, Bernard L. Madoff Investment Securities, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

63. Louis B. Todd, Jr., Chairman, John L. Watson III, President, Securities Traders Association, to Jonathan G. Katz, Secretary, SEC, dated June 20, 1991.

64. Steven T. Newby, President, Newby & Co., to Jonathan G. Katz, Secretary, SEC, dated June 21, 1991.

65. Hugh J. Quigley, Vice President, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated June 21, 1991.

66. Edward M. Posner, Managing Director, Cowen Inc., to Jonathan G. Katz, Secretary, SEC, dated June 22, 1991.

67. Malcolm C. Selver, Director, Salomon Brothers Inc., to Jonathan G. Katz, Secretary, SEC, dated June 24, 1991.

68. Gregory L. Lemasters, Vice President, George K. Baum & Co., to Jonathan G. Katz, Secretary, SEC, dated June 24, 1991.

69. James E. Brucki, Jr., Vice President, J.J.B. Hilliard, W.L. Lyons, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 1, 1991.

70. James E. Brucki, Jr., Chairman, North Carolina Security Traders Association, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 1, 1991.

71. Kenneth W. Perlman, General Counsel, Mayer & Schweitzer, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 19, 1991.

72. Junius W. Pake, Chairman, The Peake/Ryerson Consulting Group Inc., to Jonathan G. Katz, Secretary, SEC, dated August 14, 1991.

[FR Doc. 91-25038 Filed 10-16-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29811; File No. SR-NYSE-91-35]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Handling of Market-On-Close Orders

October 10, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of (1) amendments to NYSE Rules 13, 116.40 and 123A.43 for which the Exchange is seeking permanent approval; and (2) an extension of a pilot program permitting the entry of matched market-on-close ("MOC") orders, and an exemption from SEC Rule 10a-1 for matched MOC orders that are part of a program trading strategy.[1] The Exchange proposes that this pilot program be extended to run concurrently with the pilot program for the Exchange's off-hours trading sessions.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In Securities Exchange Act Release No. 28167,[3] the Commission approved on a one-year pilot basis rule changes submitted by the Exchange in File No. SR-NYSE-89-10 regarding procedures for handling and executing MOC orders to provide (1) that such orders are to be executed in their entirety at the closing price on the Exchange, and if not so executed, are to be canceled; and (2) for the entry and execution of matched MOC orders. The Commission also granted an exemption from its short sale rule, rule 10a-1, for matched MOC orders that are part of a program trading strategy. In Securities Exchange Act Release No. 29393 ([July 1, 1991), 56 FR 30954), the Commission extended the pilot program until September 30, 1991. This extension gave the Exchange the opportunity to contrast the use of matched MOC orders with certain program trading transactions effected in the Exchange's Crossing Session II, as discussed in the Exchange's report set forth below.

In File No. SR-NYSE-89-10, the Exchange noted that it had been advised by member firms that matched MOC orders were particularly necessary to meet regulatory requirements governing "Exchanges for Physicals" ("EFPs"), where a firm accommodates a customer who wishes to convert a futures position into a stock position by swapping futures for stock. In its order approving the one-year pilot program, however, the Commission expressed concern that matched MOC orders would be executed without the opportunity for order exposure or interaction with the trading crowd. The Commission pointed out that the matched MOC order procedure was different from the auction market procedures normally used on the Exchange, and possibly could result in some customer orders in the Crowd or on the limit book being by-passed. The Commission stated its belief that the purpose of the Exchange's matched MOC order proposal could be better accommodated long-term by the development of, among other possible alternatives, an after-hours trading system. The Commission further noted that, during the pilot period, the Exchange would be expected to develop criteria to evaluate the effects of the MOC procedures and to determine whether alternative measures such as an after-hours trading system should be adopted to handle these orders.

In its order extending the pilot program until September 30, 1991, the Commission again expressed concern as to the entry of matched MOC orders, and reiterated its view that the Exchange should develop alternative approaches, including the possible development of an after-hours trading system. Subsequently, the Exchange filed, and the Commission granted accelerated approval to, a proposal to extend the pilot period until November 30, 1991.[4] The Exchange requested the two month extension in order to allow the Commission time to review the Exchange's report which was submitted to the Commission on September 11, 1991. The Exchange's report evaluates the effects of the MOC procedures over the one-year pilot program.[5] The following discussion constitutes the Exchange's report with respect to the MOC pilot program.

Guaranteed Executions Pursuant to Prescribed Pricing Procedures

In File No. SR-NTSE-89-10, the Exchange submitted amendments to Rule 13 to provide that a market order with the instruction "at the close" was to be executed in its entirety at the closing price on the Exchange and, if not so executed, the order was to be treated as canceled. In its filing, the Exchange noted that it anticipated that the only time orders would be canceled would be when trading has halted in a security, or when there were special conditions to the order (such as "buy minus" or "sell plus") that cannot be met.

The Exchange also submitted amendments to Rule 116.40 to provide that, where there is an imbalance of MOC orders, the imbalance shall be executed against the prevailing bid or offer, as appropriate, with the remaining MOC orders then being stopped against each other and executed at the price of the immediately preceding transaction just described. Where there is no imbalance of MOC orders, the amendments to Rule 116.40 provide that buy MOC orders shall be paired off against sell MOC orders and executed at the last sale price on the Exchange in the subject security just prior to the close of trading on that day. These procedures had formerly been codified

[1] See Securities Exchange Act Release No. 28167 (June 29, 1990), 55 FR 28117 (order granting temporary approval to File No. SR-NYSE-89-10), and letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President and Secretary, NYSE, dated July 2, 1990, (1990 Decisions) Fed. Sec. L. Rep. (CCH) ¶ 79,651.

[2] The pilot period for the Exchange's off-hours trading sessions is due to expire in May, 1993. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (order approving File Nos. SR-NYSE-90-52 and SR-NYSE-90-53).

[3] See note 1, *supra*.

[4] See Securities Exchange Act Release No. 29761 (September 30, 1991) (order granting temporary accelerated approval to File No. SR-NYSE-91-34).

[5] The Exchange's report is available at the places specified in Item IV, *infra*.

in Rule 116.40 for use on Expiration Fridays only.

An amendment to Rule 123A.43 provides that a broker handling an order with the instruction "at the close" is to use due diligence to execute the order in its entirety at the closing price on the Exchange, and if the order cannot be so executed, it is to be canceled.

In assessing the results of the pilot program, as to use of the MOC pricing procedures and guaranteed executions of MOC orders at the closing price, the Exchange has reviewed data regarding systematized MOC orders for each of the non-expiration days in the monthly expiration weeks during the period August, 1990 through May, 1991 in each of the so-called "pilot stocks" which are likely to attract the largest amount of MOC orders and as to which special order entry requirements are used on Expiration Fridays. (These stocks are the 50 S&P 500 stockes with the highest capitalization traded on the Exchange, plus the stocks not in this grouping which are component stocks of the Major Market Index.) The data indicate that the pilot pricing and guaranteed execution procedures have operated in a manner consistent with the maintenance of fair and orderly markets at the close of trading on the Exchange, and have not resulted in either unusual volatility, or an increase in trading halts, at the close.

During the period sampled, a total of 13.2 million shares of MOC buy orders and 10.3 million shares of MOC sell orders were executed. The average buy imbalance was 6,100 shares and the average sell imbalance was 4,700 shares.[6] As to price volatility, 99.2% of closing transactions in the stocks sampled took place at a price change of ¼ point or less from the previous trade. Only one transaction took place at a price of more than ½ point away from the previous trade during the sample period. These statistics compare favorably with aggregate Exchange trade-to-trade price variation statistics, which show that, on an overall basis through the first six months of 1991, 99.6% of all trades on the Exchange took place at a price change of ¼ point or less from the previous trade. On only one occasion was trading halted at the close due to an imbalance of MOC orders. (The stock in question, SFR, a non-pilot stock, was halted on the close on December 14, 1990 with a buy imbalance of 83,000 shares.)

Thus, to date, it appears that the pricing procedures and guaranteed execution at the closing price aspects of the pilot program are working well in facilitating investor participation at an NYSE closing price that appropriately reflects the balance of supply and demand at the close, without any negative effect on the quality of the Exchange's market.

Accordingly, the Exchange is requesting that the Commission approve on a permanent basis the amendments to Rules 13, 116.40 and 123A.43 discussed above.

Matched MOC Orders

In addition to the rule amendments noted above, the Exchange also requested in SR–NYSE–89–10 approval to permit the entry and execution of matched MOC orders, as well as an exemption from SEC Rule 10a–1 as to the entry of an MOC order to sell short where (i) the member firm has also entered an MOC order to buy the same amount of stock, and (ii) both MOC orders are part of a program trading strategy by the member firm, and the orders are identified as such.

Although the provision for matched MOC orders was intended to facilitate member firms' EFP activity, it does not appear that this aspect of the pilot program has had, to date, any impact on the effecting of EFP transactions on the Exchange. From the beginning of the pilot program through June 12, 1991 (the day prior to the commencement of the Exchange's off-hours trading sessions as approved by the Commission on a two-year pilot basis in Release No. 34–29237 (May 24, 1991)), member firms reported a total of 899 EFP-related transactions to the Exchange. Of these, 33, or 3.6%, were actually effected on the exchange. None of the 33 EFP transactions reported as having been done on the Exchange employed matched MOC orders. No transactions were effected using the exemption from rule 10a–1.

In light of the Commission's expressed view that the NYSE consider some type of after-hours trading system as an alternative to the use of matched MOC orders, the Exchange has reviewed EFP activity during the first two months of trading in Crossing Session II, which is the Exchange's off-hours facility intended to facilitate member firms' program trading transactions.

During the period June 13, 1991 through August 13, 1991, member firms reported 52 EFP-related programs to the Exchange. Of these, 16 or 30.8% were reported as having been effected on the Exchange, in Crossing Session II. These 16 programs involved 29,486,306 shares (41.9% of total share volume of EFP and EFP-related programs reported to the Exchange) with a total dollar value of $1,297,922,326 (42.8% of the total dollar value of EFP and EFP-related programs reported to the Exchange).

It appears to date that member firms find Crossing Session II a more viable alternative than the use of matched MOC orders for the effecting of EFP transactions on the Exchange. However, the Exchange believes that it would be appropriate to extend the pilot program for the use of matched MOC orders and the exemption from rule 10a–1 to run concurrently with the Crossing Session II pilot program in order to give the Exchange a reasonable, longer time period to evaluate the overall viability and effectiveness on both approaches in meeting the needs of member firms and their customers. While the non-use to date of matched MOC orders obviously makes it impossible to assess either benefits or harm to the market from this approach, the Exchange believes that member firms should continue to have the choice of using either matched MOC orders or Crossing Session II, as firms may over the course of the pilot program determine that use of matched MOC orders is appropriate for them and their customers in certain instances. The exchange will, of course, continue to monitor whether matched MOC orders are being used; if such orders are used, the Exchange will assess, and report to the Commission at the conclusion of the pilot period, the impact of matched MOC orders on overall market quality, and on any possible displacement of orders on the specialist's book or in the Crowd.

The Exchange believes that the exemption for paired MOC orders from rule 10a–1 which was granted by the Commission at the time of the approval of the proposed rule amendments in File No. SR–NYSE–89–10, should also be extended.[7] The Exchange continues to believe, as outlined in File No. SR–NYSE–89–10, that the execution of a MOC order to sell short does not offer an opportunity for price manipulation when that order is both entered and executed against an offsetting MOC buy order and is part of a program trading strategy.

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

[6] See exhibit B to File No. SR–NYSE–91–35 for a listing of imbalances, by stock, for the periods sampled.

[7] See note 1, *supra*.

securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-35 and should be submitted by November 5, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-25012 Filed 10-16-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Adjustments in the Terms of Outstanding Stock Index Options

October 10, 1991

[Release No. 34-29802; File No. SR-OCC-91-15]

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (Act), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 23, 1991, The Options Clearing Corporation (OCC) filed with the Securities and Exchange Commission (Commission) the proposed rule change as described by the self-regulatory organization in Items I, II, and III below. This order grants accelerated approval of OCC's proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would give OCC the authority to make equitable adjustments in the terms of outstanding stock index options when the publisher of the underlying index changes the method of calculating the value of the index by increasing the index divisor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[8] 17 CFR 200.30-3(a)(12) (1990).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to give OCC the authority to make equitable adjustments in the terms of outstanding stock index options when the publisher of the underlying index changes the method of calculation by increasing the index divisor. The rule change is occasioned by the recent proposal of the American Stock Exchange (Amex) to decrease the Major Market Index (Index or XMI) to one half of its present value by doubling the divisor used in calculating the Index.[1] Halving the present value of the Index is analogous to a two for one stock split. Accordingly, the value of one current XMI contract will be equal to the value of two proposed XMI contracts.[2]

Under the proposed rule change, if the publisher or proprietor of an index changes the method of calculation in such a way that the new index value is an integral fraction of the old index value (*i.e.*, the new index value is evenly divisible into the old index value), OCC would be allowed to "split" the outstanding option contracts proportionally or to make other adjustments as it deems fair and appropriate. The proposed rule change deals only with situations where the new index value is an integral fraction of the old one so that subdividing outstanding option contracts will not result in fractional contracts. Other situations will be addressed if and when they arise.

The proposed rule change is consistent with the requirements of section 17A of the Securities Exchange Act of 1934 (Act) in that it furthers the protection of investors and public interest by providing for equitable adjustments to outstanding stock index options, thereby preserving and enhancing the liquidity of the affected options. The proposed rule change has no effect on the safeguarding of securities and funds for which OCC is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

[1] Securities Exchange Act Release No. 29798 (October 8, 1991), [File No. SR-AMEX-91-18]. The Amex intends to implement the new method of calculating the XMI on October 11, 1991.

[2] The practical effect would allow OCC to double its members' open interests in XMI contracts.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

OCC requests that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing, and the Commission finds good cause for granting accelerated approval of the proposed rule change. Accelerated approval will permit OCC to make equitable adjustments in the terms of the outstanding XMI options contracts when Amex adjusts the XMI on October 11, 1991. Such an equitable adjustment by OCC will make outstanding XMI options contracts fungible with the newly issued XMI options contracts and will enable both to be traded in the same market.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File Number SR-OCC-91-15 and should be submitted by November 7, 1991.

V. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposal (File No. SR-OCC-91-15) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-25039 Filed 10-16-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29780A; File No. ODD-91-2]

Self-Regulatory Organizations; The Options Clearing Corporation; Corrected Order Approving Supplement to Options Disclosure Document Regarding Cross-Rate Foreign Currency Options

October 10, 1991.

On June 3, 1991, the Options Clearing Corporation ("OCC"), in conjunction with the Philadelphia Stock Exchange, Inc. ("PHLX"), submitted to the Securities and Exchange Commission ("SEC" and "Commission), pursuant to rule 9b-1 of the Securities Exchange Act of 1934 ("Act"),[1] preliminary copies of a Supplement to the Options Disclosure Document ("ODD") which describes the characteristics and risks of trading in the PHLX's new cross-rate foreign currency options.[2] Five definitive copies of the Supplement were delivered on September 30, 1991.

The original Order approving the Supplement to the Options Disclosure Document regarding cross-rate foreign currency options was approved by the Commission on October 2, 1991, in Securities Exchange Act Release No. 29780 (October 2, 1991). However, due to an oversight in the processing of this original order, specific language regarding the timing of ODD delivery to investors was excluded. Accordingly, the following discussion sets forth the original order together with the excluded ODD delivery language.

The proposed Supplement to the ODD provides for disclosure to accommodate the PHLX's cross-rate currency options proposal which has been submitted to the Commission separately.[3] This Supplement, which is to be read in conjunction with the more general ODD entitled Characteristics and Risks of Standardized Options, describes, among other things, the special characteristics, features and risks of cross-rate foreign currency options. Pursuant to rule 9b-1, the Supplement will have to be provided to investors in cross-rate options before their accounts are approved for cross-rate transactions or their orders for cross-rate options are accepted.

The Commission has reviewed the ODD Supplement and finds that it complies with rule 9b-1. The Supplement is intended to be read in conjunction with the ODD, which discusses the characteristics and risks of foreign currency options generally. The Supplement provides additional information regarding cross-rate options contracts sufficient to describe the special characteristics and risks of these products.

Rule 9b-1 provides that an options market must file five copies of amendments to a disclosure document with the Commission at least 30 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors.[4] Because preliminary copies of amendments to the disclosure document were filed more than 30 days before definitive copies were distributed to the public, the Supplement was filed with the Commission in a timely manner.[5] Regardless of the timing of filing of the Supplement, the Commission believes it is consistent with the public interest and the protection of investors to allow distribution of the Supplement as of October 1, 1991. Specifically, the Commission believes that, because the proposed amendments provide adequate disclosure of the special characteristics, features, and risks of trading in cross-rate foreign currency options, thereby helping to ensure that customers engaging in cross-rate options transactions are capable of understanding the risks of such trading activity, it is consistent with the public interest for it to be distributed to

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[1] 17 CFR 240.9b-1 (1990).

[2] See letters from James C. Yong, Assistant Vice President and Deputy General Counsel, OCC, to Brandon Becker, Deputy Director, Division of Market Regulation, SEC, dated June 3 and August 30, 1991.

[3] SR-Phlx-90-12, Securities Exchange Act Release No. 28737 (January 3, 1991).

[4] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[5] The final form of the Supplement was filed with the Commission on September 30, 1991. The changes to the Supplement made between the filing of the preliminary copies and the definitive copies did not materially alter the Supplement, so that the Commission believes the preliminary copies satisfy the 30 day requirement.

investors before the planned October 4 commencement of cross-rate options trading on the Philadelphia Stock Exchange.

It Is Therefore Ordered. Pursuant to rule 9b–1 of the Act, [6] that the proposed Supplement to the ODD to accommodate the PHLX's proposed trading of cross-rate currency options is approved.

For the Commission, By the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–24937 Filed 10–16–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29805; File No. SR–PSE–90–44]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Listing Guidelines for Certain Unit Investment Trusts

October 10, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 10, 1990, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change was described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend rules 3.2 and 3.5 the PSE Rule Book to provide for the listing of a unit investment trust ("UIT") that issues securities based on a portfolio of stocks included in a broad-based stock market index and/or a portfolio of money market instruments or other debt securities.

[6] 17 CFR 240.9b–1 (1990).

[7] 17 CFR 200.30–3(a)(39) (1990).

[1] Similar proposals have been filed by the American Stock Exchange, Inc. and the Chicago Board Options Exchange, Inc. See, Securities Exchange Act Release Nos. 28095 (June 6, 1990), 55 FR 24016 (June 13, 1990), and 28132 (June 19, 1990) 55 FR 26038 (June 26, 1990), respectively.

[2] The proposal was amended on August 23, 1991, to provide a definition for the term Unit Investment Trust ("UIT"), to provide heightened suitability standards for UIT interests that can be separated into component securities, and to require that discretionary orders in UIT interests that can be separated into component securities be approved on the day the orders are entered.

II. Self-Regulatory Organization's Statement of, the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to amend rules 3.2 and 3.5 of the PSE Rule Book to provide for the listing of a unit investment trust that issues securities based on a portfolio of stocks included in a board-based stock market index and/or a portfolio of money market instruments of other debt securities. These unit investment trusts permit investors to separate their holdings into distinct trading components which represent interests in the income and capital appreciation of securities deposited in the trust. Under the proposal, these unit investment trusts may operate on an open or closed end basis and may permit investors to separate their securities into distinct trading components. These distinct trading components may represent interests in the income, capital appreciation potential, or other economic characteristics of the securities deposited in the unit investment trust.

Under the proposal, a unit investment trust's eligibility for listing its securities will be subject to the following requirements. First, the unit investment trust must have assets in excess of $100 million and comply with the size and earnings requirements of the PSE. Second, the trust must have a minimum public distribution of 1,000,000 shares or units held specifically by a minimum of 400 public holders. Third, the trust must have an aggregate market value of $18 million. Fourth, the trust must have a term of two years or as otherwise stated in the Trust prospectus. Alternatively, the PSE will list a unit investment trust if the trust meets the minimum standards as established by another authorized national securities exchange.

Under the proposal, the Exchange will consider the suspension of trading in or withdrawal from listing of the securities of a unit investment trust if the aggregate market value of the trust is less than $1 million, or if the related security to which the cash payment of the trust at term is tied is delisted. The Exchange will also consider the suspension of trading in, or removal from listing of, any unit investment trust if further dealings in such securities appears unwarranted due to the occurrence of any of the following circumstances: The trust has more than 60 days remaining until termination and there are less than 50 record and/or beneficial holders of shares, units or trading components thereof for 20 or more consecutive trading days; there has been a failure on the part of the trust and/or trustee to comply with the PSE's listing policies or agreements; or such other event occurs or condition exists that, in the PSE's opinion, makes further dealings on the Exchange inadvisable.

The proposal also provides for specific rules to govern the trading of UIT interests. First, the proposal requires that a broker recommending a purchase of a UTI interest product (i.e., securities issued by a unit investment trust and any distinct trading components of those securities) to determine that all aspects of the product, including its component parts, are not unsuitable for the customer and that the customer has the financial ability to bear the risk of the product, including its component parts, even if the recommendation is limited to purchasing a whole UIT interest rather than any of the component parts. This suitability standard is substantially identical to the one that is applied to recommendations in options products.

Second, the PSE proposes to require that discretionary orders in UIT interests be reviewed by a Senior Registered Options Principal, a Registered Options Principal, or a person delegated such responsibility. Third, the PSE proposes that trading in an index UIT interest will be halted when trading in index options has been halted.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 7, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91- 25013 Filed 10-16-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18356; 812-7766]

Daily Money Fund, et al.; Notice of Application

October 9, 1991.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the Act).

APPLICANTS: Daily Money Fund; Daily Money Fund II; Equity Portfolio: Growth; Fidelity Franklin Trust; Fidelity Beacon Street Trust; Fidelity Beacon Street Trust II; Fidelity California Municipal Trust; Fidelity California Municipal Trust II; Fidelity Capital Trust; Fidelity Cash Reserves; Fidelity Charles Street Trust; Fidelity Commonwealth Trust; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Recovery Fund; Fidelity Corporate Trust; Fidelity Court Street Trust; Fidelity Union Street Trust II; Fidelity Destiny Portfolios; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Devonshire Trust; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Trust; Fidelity Fund; Fidelity Government Securities Fund (a limited partnership); Fidelity Government Securities Fund; Fidelity Income Fund; Fidelity Institutional Cash Portfolios; Fidelity Institutional Trust; Fidelity Investment Trust; Fidelity Limited Term Municipals; Fidelity Magellan Fund; Fidelity Massachusetts Municipal Trust; Fidelity Money Market Trust; Fidelity Money Market Trust II; Fidelity Mt. Vernon Street Trust; Fidelity Municipal Trust; Fidelity Municipal Trust II; Fidelity New York Municipal Trust; Fidelity New York Municipal Trust II; Fidelity Qualified Dividend Fund; Fidelity Puritan Trust; Fidelity Securities Fund; Fidelity Select Portfolios; Fidelity Adviser Special Situations Fund; Fidelity Sterling Performance Portfolio, L.P.; Fidelity Summer Street Trust; Fidelity Trend Fund; Fidelity Union Street Trust; Fidelity Union Street Trust II; Fidelity U.S. Investments—Bond Fund, L.P.; Fidelity U.S. Investments—Government Securities Fund, L.P.; Fidelity Yen Performance Portfolio, L.P.; Fidelity Income Trust; Income Portfolios II; Fidelity Diversified Trust; Fidelity Investment Series; Fidelity Securities Trust; Spartan U.S. Treasury Money Market Fund; Fidelity Oliver Street Trust; Variable Insurance Products Fund; Zero Coupon Bond Fund; Fidelity Institutional Tax-Exempt Cash Portfolios; Fidelity Institutional Tax-Exempt Cash Portfolios II; Daily Tax-Exempt Money Fund; Daily Tax-Exempt Money Fund II; Fidelity Management & Research Company (FMR); and other open-end investment companies for which FMR or an affiliate thereof acts or may act as investment adviser.

RELEVANT ACT SECTION: Section 45(a).

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 45(a) of the Act declaring that public disclosure of sections II through V of a report concerning the Fidelity Group of Funds Interfund Lending Facility Design, dated May 31, 1991, is neither necessary nor appropriate in the public interest or for the protection of investors.

FILING DATE: The application was filed on July 31, 1991 and amended on October 8, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 5, 1991, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263 or Jeremy N. Rubenstein, Assistant Director, at (202) 272-3023 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

[3] 17 CFR 200.30-3(a)(12) (1990).

Applicants' Representations

1. Each applicant investment company ("Fund") is a business trust formed under the laws of Massachusetts or Delaware or a partnership formed under the laws of Nebraska or Delaware. Each Fund has entered or will enter into a management or advisory and service contract with FMR. The principal underwriter for each of the Funds is or will be Fidelity Distributors Corporation.

2. On January 11, 1990, the SEC issued an order under sections 6(c) and 17(b) of the Act granting the Funds and FMR exemptions from the provisions of section 12(d)(1), 17(a)(1), 17(a)(3), 17(d), 18(f), and 21(b) of the Act, and rule 17d–1 thereunder, to enable the Funds and FMR to establish a facility through which Funds having uninvested cash could, under certain circumstances, loan that cash to Funds seeking to borrow cash on a temporary basis (the Interfund Lending Facility or Facility). *Daily Money Fund*, Investment Company Act Release Nos. 17257 (December 8, 1989) (notice) and 17303 (January 11, 1990) (order).

3. As a condition to the January 11, 1990 order, FMR and the Funds agreed to prepare and submit to the Funds' boards of directors or general partners an initial special report on the design of the Interfund Lending Facility, including a report by their independent public accountants (Initial Report). FMR and the Funds further agreed that, following review of the Initial Report, the next Fund required to file its From N–SAR would file the Initial Report as an exhibit and the other Funds would incorporate the Initial Report by reference in their next Form N–SAR filings. In satisfaction of the above condition, Fidelity Select Portfolios designated the Initial Report as an exhibit to its Form N–SAR for the period ending April 30, 1990, and the other Funds incorporated the Initial Report by reference into their next Form N–SARS.

4. Simultaneous with the filing of the Initial Report, FMR and the Funds requested and received confidential treatment under section 45(a) of the Act for the Initial Report. Investment Company Act Release Nos. 17771 (Oct. 2, 1990) (notice) and 17827 (Oct. 30, 1990) (order).

5. As a further condition to the January 11, 1990 order, the Funds and FMR agreed that on the first and second anniversary of the commencement of operations of the Interfund Lending Facility, they would submit to the SEC an annual report on the "Design of a System and Certain Compliance Tests," that would include an opinion of the Funds' independent public accountant as to the sufficiency of the operation and control procedures of the Interfund Lending Facility (Annual Report). In satisfaction of the first anniversary portion of this condition, Fidelity Cash Reserves has designated the Annual Report dated May 31, 1991 as an exhibit to its Form N–SAR for the period ending May 31, 1991, and each other Fund will incorporate the Annual Report by reference as an exhibit to its next Form N–SAR.

6. Applicants now request an order under section 45(a) of the Act that would grant confidential treatment to the May 31, 1991 Annual Report.

7. Section I of the Annual Report describes in general terms the application and order authorizing the Interfund Lending Facility and the contents of the Annual Report. Much of this material has previously been made public, and confidential treatment of section I is not requested.

8. Section II describes the criteria used by the Funds and FMR to determine whether and when it would be appropriate for a Fund to make use of the Interfund Lending Facility. It outlines the preliminary steps taken by FMR to establish the managerial, legal, and operational controls, describes the computer hardware and software used, and the backup and record keeping systems. It also describes the responsibilities of each group within FMR or the Funds.

9. Section III summarizes the control objectives and the procedures used to accomplish each objective. It identifies the documentation required at each step, as well as the managerial, legal, and operational approvals required.

10. Section IV describes in detail the management control procedures used to assure compliance with each of the control objectives. It describes in greater detail than sections II and III the legal and managerial approvals required, the documentation necessary, and the parties responsible for carrying out each step.

11. Section V describes in detail the operational procedures devised by the Funds and FMR to help ensure compliance with each of the control objectives. It describes in greater detail than sections II and III the operational steps required and the parties responsible for each step.

12. The Annual Report has been and continues to be maintained by the Funds on a strictly confidential, non-public, need-to-know basis.

13. The Funds generated the Annual Report within the last year. As a result, the Annual Report reflects current methods and capabilities of management and control.

Applicants' Legal Analysis

14. Section 45(a) of the Act provides that the information contained in any application filed with the SEC under the Act shall be made available to the public, unless and except insofar as the SEC finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.

15. Applicants state that public disclosure of the Annual Report is not necessary to inform shareholders or potential investors in the Funds of the material facts regarding the Funds' participation in the Interfund Lending Facility. Each Fund participating in the Interfund Lending Facility has added disclosures to its prospectus concerning the Interfund Lending Facility and the Fund's participation therein.

16. The Freedom of Information Act, 5 U.S.C. 552, provides various exceptions to the general rule that all information provided to or generated by the government should be made available to the public.[1] One such exception is for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4).

17. Applicants state that the information contained in the Annual Report fits within the above mentioned exception because it has been obtained from a person, is both commercial and financial in nature, and is, and has been treated as, confidential.

18. Applicants state that because they are engaged in a highly competitive business, they would likely lose a significant competitive advantage as a result of the disclosure of the information contained in the Annual Report. The Interfund Lending Facility allows both borrowing and lending Funds to obtain a higher return for shareholders than they could obtain in the absence of such a facility. As the Interfund Lending Facility is the first and only facility of its kind to be permitted by the SEC, the Funds and FMR believe that no other investment company group has yet undertaken to develop similar operational and control procedures. The Annual Report documents each of the steps necessary to establish such a system, and thus would enable other investment company complexes to develop such a system in a much shorter time and with far greater

[1] The Division of Investment Management recognizes that any order granting the confidential treatment requested by applicants will be issued under section 45(a) only, and that any such order will not be dispositive of any Freedom of Information Act request filed by a third party.

confidence in its soundness than they might have absent the Annual Report.

19. Applicants believe the Annual Report would be extraordinarily useful to their major competitors. The Annual Report as a whole would provide competitors a blueprint for the establishment and monitoring of an interfund lending facility. Operation of the Facility is highly complex. The development of the Facility required FMR to review its entire system to identify problems that might occur in the operation of the Facility, develop controls to help insure that such problems would not occur, develop procedures to implement such controls, develop computer and manual techniques for carrying out those procedures, and instruct the relevant personnel in how to carry them out. This process required in excess of 12 months and cost approximately $100,000 to complete, and involved numerous meetings of FMR staff, as well as input from the Fund's auditors, counsel, and custodians.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-24939 Filed 10-16-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18353; 811-4307]

Discovery Income Shares, Inc.; Notice of Application

October 9, 1991.

AGENCY: Securities and Exchange Commission (SEC or Commission).

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (1940 Act).

APPLICANT: Discovery Income Shares, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 28, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 5, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issued contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o ABD Securities Corporation, One Battery Park Plaza, New York, NY 10004 with a copy of Matthew G. Maloney, Esq., Dickstein, Shapiro & Morin, 2101 L Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272-7779, or Barry D. Miller, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

1. Applicant, a Maryland corporation, is an open-end diversified management investment company. Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on May 22, 1985 and a registration statement pursuant to section 8(b) of the 1940 Act on August 22, 1985. Applicant has not filed any registration statements under the Securities Act of 1933.

2. On May 14, 1991, the Board of Directors adopted a plan of liquidation and dissolution that was thereafter approved by stockholders at a special meeting on June 24, 1991.[1] All of the Applicant's portfolio securities matured on or before the date of liquidation. As of June 26, 1991, Applicant had total net assets of $6,008,277.35 comprising 646,368.813 shares outstanding at a net asset value of $9.30 per share. Pursuant to the plan of liquidation and dissolution, on June 27, 1991, Applicant distributed to its stockholders $9.30 per share.

3. Liquidation expenses, including accounting, legal, and tax advice (including costs of preparing, printing and mailing proxy materials and filings with federal and state regulatory agencies), were borne by Applicant and totalled $21,853.

4. Applicant filed articles of dissolution with the State of Maryland on June 28, 1991. Applicant has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders, and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-24940 Filed 10-16-91; 8:45 am]

BILLING CODE 8010-01-M

[1] The staff of the Division of Investment Management notes that Applicant filed proxy materials on May 29, 1991 with the Commission. The proxy materials state that Applicant was organized primarily to provide institutional investors organized in the Federal Republic of Germany with an investment subject to favorable tax treatment. However, pursuant to a new income tax treaty between the United States and the Federal Republic of Germany, these tax advantages were eliminated. The proxy materials also indicate that the Applicant's principal shareholder advised Applicant that it intended to redeem its shares on or before July 1, 1991. In light of this anticipated redemption, the Board of Directors met to consider alternatives available to the Applicant.

[Rel. No. IC-18362; 811-6010]

Dreyfus Highest Quality Government Securities Money Fund; Notice of Application for Deregistration

October 10, 1991.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the Act).

APPLICANT: Dreyfus Highest Quality Government Securities Fund (Dreyfus Government Fund, or the Fund).

RELEVANT 1940 ACT SECTIONS: Section 8(f) and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 4, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 144 Glen Curtiss Boulevard, Uniondale, New York 11556–0144.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or Max Berueffy, Branch Chief, (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Dreyfus Government Fund is a Massachusetts business trust and open-end diversified management company registered under the Act. On May 4, 1990 the Fund filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act. On this same day, the Fund filed a registration statement on Form N–1A, thereby registering under section 8(b) of the Act and under the Securities Act of 1933. The Fund's registration statement was declared effective on June 22, 1990.

2. Pursuant to a written consent dated August 30, 1991, Dreyfus Government Fund's sole Trustee determined that it was in the best interest of the Fund to terminate its existence as a Massachusetts business trust, liquidate its assets, and distribute the assets to the Fund's sole shareholder, The Dreyfus Corporation. The Dreyfus Corporation purchased the shares to enable the Fund to meet the net worth requirements of section 14(a) of the Act. Dreyfus Government fund has no other securityholders.

3. Dreyfus Govenrment Fund has never made a public offering of its securities nor does it propose to make a public offering.

4. At the time of filing of the application, Dreyfus Government Fund had no shareholders, assets or liabilities. The Fund is not a party to any litigation or administrative proceedings. The Fund is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–24941 Filed 10–16–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18361; 811–6232]

Dreyfus U.S. Government Money fund; Notice of Application for Deregistration

October 10, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Dreyfus U.S. Government Money Fund ("Dreyfus U.S. Government Fund," or the "Fund").

RELEVANT 1940 ACT SECTIONS: Section 8(f) and rule 8f–1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 4, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 144 Glen Curtiss Boulevard, Uniondale, New York 11556–0144.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or Max Berueffy, Branch Chief, (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public References Branch.

Applicant's Representations

1. Dreyfus U.S. Government Fund is a Massachusetts business trust and open-end diversified management company registered under the Act. On December 21, 1990 the Fund filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act. On this same day, the Fund filed a registration statement on Form N–1A, thereby registering under section 8(b) of the Act and under the Securities Act of 1933. The Fund's registration statement was declared effective on January 18, 1991.

2. Pursuant to a written consent dated August 30, 1991, Dreyfus U.S. Government Fund's sole Trustee determined that it was in the best interest of the Fund to terminate its existence as a Massachusetts business trust, liquidate its assets, and distribute the assets to its sole shareholder, The Dreyfus Corporation. The Dreyfus Corporation purchased the shares to enable the Fund to meet the net worth requirements of section 14(a) of the Act. Dreyfus U.S. Government Fund has no other security holders.

3. Dreyfus U.S. Government Fund has never made a public offering of its securities nor does it propose to make a public offering.

4. At the time of filing of the application, Dreyfus U.S. Government Fund had no shareholders, assets or liabilities. The Fund is not a party to any litigation or administrative proceedings. The Fund is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–24942 Filed 10–16–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18363; 812–7645]

Franklin Investors Securities Trust, et al.; Notice of Application

October 10, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application of exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: (1) Franklin Investors Securities Trust, Franklin Managed Trust, Franklin Premier Return Fund, Franklin New York Tax-Free Income Fund, Franklin Pennsylvania Investors Fund, Franklin Tax-Advantaged High Yield Securities Fund, Franklin Tax-Advantaged International Bond Fund, Franklin Tax-Free Trust, Franklin Valuemark Funds, AGE High Income Fund, Inc., Franklin Balance Sheet Investment Fund, Franklin California Tax-Free Income Fund, Inc., Franklin California Tax-Free Trust, Franklin Custodian Funds, Inc., Franklin Equity Fund, Franklin Federal Tax-Free Income Fund, Franklin Gold Fund, and Franklin

International Trust, (2) all future open-end investment companies that are not Money Funds (as defined below) and for which subsidiaries or affiliates of Franklin Resources, Inc. serve as investment manager (which together with the investment companies named in clause (1) are referred to herein collectively as the "Funds"), (3) Franklin Money Fund, Franklin California Tax-Exempt Money Fund (a series of the Franklin California Tax-Free Trust), Franklin New York Tax-Free Trust, and Franklin Tax-Exempt Money Fund, (4) all future open-end investment companies that hold themselves out as "money market funds" and are subject to the requirements of rule 2a–7 under the Act and for which subsidiaries or affiliates of Franklin Resources, Inc. serve as investment manager (which together with the investment companies named in clause (3) are referred to herein collectively as the "Money Funds"), (5) Franklin Advisers, Inc., and (6) all future investment advisers of the Funds or the Money Funds seeking to rely on the requested order (which together with Franklin Advisers, Inc. are referred to herein as the "Advisers").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) and rule 17d–1 from the provisions of sections 12(d)(1)(A)(ii), 17(a) and 17(d).

SUMMARY OF APPLICATION: Applicants request an order that would permit the Money Funds to sell their shares to the Funds and permit the Advisers to effect such sales.

FILING DATE: The application was filed on November 29, 1990 and amended on May 20, 1991 and October 9, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 6, 1991, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 777 Mariners Island Boulevard, San Mateo, California 94404–1585.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Each Fund and Money Fund is registered as an open-end management investment company. Certain Funds consist of two or more series ("Series").

2. Each Money Fund seeks high current income, liquidity and capital preservation by investing exclusively in short-term money market instruments such as U.S. Government securities, bank obligations, commercial paper, municipal obligations or repurchase agreements secured by Government securities.

3. Each Fund often has cash reserves that have not been invested in portfolio securities by the end of a trading day ("Uninvested Cash"). This Uninvested Cash comes from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, and new monies received from investors.

4. Applicants seek an order that would permit the Funds to use their Uninvested Cash to purchase shares of one or more of the Money Funds. If the requested relief is granted, the tax-free Funds would generally invest only in Franklin California Tax-Exempt Money Fund, Franklin New York Tax-Free Trust, and Franklin Tax-Exempt Money Fund, while the taxable Funds would invest only in Franklin Money Fund. As a Fund requires cash for any expenditure, investment, or redemption of its shares, it will redeem the exact amount of shares of the Money Funds needed for such purposes.

5. In order to avoid duplicative advisory fees, the Funds will not be required to pay Advisers under their respective management agreements to the extent to the assets of the Funds are invested in the Money Funds. To achieve this result, the Funds' Advisers will waive their management fees on the portion of the net assets of the Funds invested in the Money Funds during any month.

6. As required by applicable state securities laws and pursuant to the management contracts with the Funds or Series, from time to time Advisers will waive fees or reimburse the Funds for certain of their expenses to the extent necessary to ensure that the expenses of each such Fund or Series are below a specified or predetermined amount ("Expense Cap Waiver"). For the purpose of determining any amount to be waived and/or expenses to be borne in order to comply with any Expense Cap Waiver, Advisers will include in the expenses of each Fund that portion of the expenses of the Money Funds borne by the portion of the Fund's assets invested in the Money Funds. Any applicable Expense Cap Waiver will not limit the fee waiver described in paragraph 5.

7. The Funds will vote their shares of the Money Funds in proportion to the vote by all other shareholders of the Money Funds. Further, the Funds will purchase and redeem shares of the Money Funds at the same time and price and receive dividends and bear expenses on the same basis as all other shareholders of the Money Funds.

8. Applicants also request relief that would permit the Funds to invest Uninvested Cash in, and hold shares of, a Money Fund in excess of the percentage limitations set out in section 12(d)(1)(A)(ii) of the Act. The deviation from section 12(d)(1)(A)(ii) will be limited as follows: each Fund will be permitted to invest in shares of a single Money Fund so long as such Fund's aggregate investment in such Money Fund does not exceed the greater of 5% of such Fund's total net assets or $2.5 million. No Fund's aggregate investment in all investment companies (including all Money Funds) will be permitted to exceed 10% of such Fund's total net assets. No single Fund will be permitted to own more than 3% of the total outstanding voting stock of any Money Fund or other investment company. Thus, the limitations in section 12(d)(1)(A) (i) and (iii) will continue to apply.

Applicant's Legal Analysis

1. Sections 17(a) (1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person, acting as principal, to sell or purchase any security to or from such investment company. The Funds and Money Funds may be affiliated persons of each other by virtue of being under common control because they are members of the same

complex and because they share the same investment adviser.

2. Section 17(b) of the Act permits the SEC to exempt a transaction from the provisions of section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act,[1] and the proposed transaction is consistent with the general purposes of the Act.

3. Applicants state that the proposed transactions will be reasonable and fair because the Funds agree to purchase and redeem shares of the Money Funds at the same time and price, and receive dividends and bear expenses on the same basis, as all other shareholders of the Money Funds. Applicants also state that there will be no opportunity for overreaching since the Funds will retain their ability to invest their cash balances directly into money market instruments if they believe they can obtain a higher return. Each of the Money Funds has the right to discontinue selling shares to any of the Funds if its Board of Directors determines that such sales would adversely affect the portfolio management and operations of such Money Fund. In order to assure that the Funds will not exert any undue influence on any of the Money Funds, the Funds will vote their shares of the Money Funds in proportion to the vote by all other shareholders of the Money Funds.

4. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Each Fund (by purchasing shares of the Money Funds), Advisers (by managing the assets of the Funds invested in Money Funds), and each of the Money Funds (by selling shares to the Funds), could be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d)(1) of the Act and rule 17d–1 thereunder.

5. Rule 17d–1 requires the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC considers whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. Applicants state that since the investment by the Funds in shares of the Money Funds will be on the same basis as any other shareholder account, the Funds will participate on a fair and reasonable basis in the returns and expenses of the Money Funds.

6. Section 6(c) of the Act allows the SEC to extend the relief permitted under section 17(b) of the Act and rule 17d–1 under the Act to cover an entire class of transactions if the SEC finds that such relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the proposed transactions meet these standards because they will provide the Funds, the Money Funds, and their shareholders with a means of increasing their returns, reducing transaction costs, and avoiding a reduction in or possible loss of investment opportunities.

7. Section 12(d)(1)(A)(ii) of the Act sets certain limits on an investment company's ability to invest in the shares of another investment company. Applicants state that, in keeping with the standards for relief under section 6(c) of the Act, the limited exemption from the percentage limitations of section 12(d)(1)(A)(ii) is necessary or appropriate in the public interest and consistent with the protection of investors. Applicants argue that because no Fund will own more than 3% of any Money Fund and because the Money Funds maintain a highly liquid portfolio, none of the Money Funds will be subject to undue influence from a Fund or Series resulting from the threat of a large-scale redemption. Applicants also argue that because the Funds will vote their Money Fund shares in the same proportion as the Money Funds' other shareholders, no fund or Series will be in a position to gain voting control of a Money Fund. Finally, applicants argue that there will be no duplication of advisory fees because Advisers will waive their management fees on the portion of the net assets of the Funds invested in the Money Funds, and that shareholders of a Fund or Series will have no trouble determining the value of their shares because the Money Funds maintain a stable one dollar net asset value.

Applicants' Conditions

Applicants agree to the following conditions to the requested relief:

1. Each of the Money Funds will calculate its net asset value in accordance with rule 2a–7 under the Act.

2. The Money Funds will not be subject to a sales load, redemption fee, or distribution fee under a plan adopted in accordance with rule 12b–1.

3. For the purpose of determining any amount to be waived and/or expenses to be borne in order to comply with any Expense Cap Waiver, Advisers will include in the expenses of each Fund that portion of the expenses of the Money Funds borne by the portion of the Fund's assets invested in the Money Funds.

4. Advisers will waive all fees payable to them under their respective management contracts with the Funds to the extent such fees are based upon Fund assets invested in shares of the Money Funds.

5. Each of the Funds will be permitted to invest Uninvested Cash in, and hold shares of, a Money Fund only to the extent that such Fund's aggregate investment in such Money Fund does not exceed the greater of 5% of such Fund's total net assets or $2.5 million, and such Fund's aggregate investment in all investment companies (including all Money Funds) does not exceed 10% of such Fund's total net assets. No single Fund will be permitted to own more than 3% of the total outstanding voting stock of any Money Fund or other investment company. For purposes of these limitations, each Series within a Fund will be treated as a separate investment company. Accordingly, a single Series' investments and share ownership of a particular Money Fund will not be aggregated with the Money Fund investments and share ownership of any other series within the same Fund for the purposes of determining whether the foregoing limitations have been satisfied.

6. The Funds will vote their number of shares in each of the Money Funds in the same proportion as the votes of all other shareholders in such Money Fund.

7. The Funds will purchase and redeem shares of each of the Money Funds as of the same time and at the same price, and will receive dividends and bear their proportionate share of expenses on the same basis, as other shareholders of such Money Fund. A separate account will be established in

[1] Applicants state that if the requested relief is granted, the policies of the Funds will be amended, or a proposal to amend such policies will be submitted to the shareholders of the Funds, as appropriate, to permit each Fund to purchase and redeem shares of the Money Funds.

the shareholder records of each of the Money Funds for each of the acquiring Funds or Series thereof.

8. Any fees waived in connection with the purchase and sale of shares of the Money Funds as described herein will be waived for all time, and will not be subject to recoupment by Advisers at a later date.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secreatry.

[FR Doc. 91-25040 Filed 10-16-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18352; 811-4600]

October 9, 1991.

Horizon Income Shares, Inc.; Notice of Application

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Horizon Income Shares, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 28, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 5, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, D.C. 20549. Applicant, c/o ABD Securities Corporation, One Battery Park Plaza, New York, NY 10004 with a copy to Matthew G. Maloney, Esq., Dickstein, Shapiro & Morin, 2101 L Street, NW., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272-7779, or Barry D. Miller, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is an open-end diversified management investment company. Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on March 3, 1986 and a registration statement pursuant to section 8(b) of the 1940 Act on May 28, 1986. Applicant has not filed any registration statement under the Securities Act of 1933.

2. On May 14, 1991, the Board of Directors adopted a plan of liquidation and dissolution that was thereafter approved by stockholders at a special meeting on June 24, 1991.[1] All of the Applicant's portfolio securities matured on or before the date of liquidation. As of June 26, 1991, Applicant had total net assets of $11,723,883.64 comprising 1,183,530.890 shares outstanding at a net asset value of $9.91 per share. Pursuant to the plan of liquidation and dissolution, on June 27, 1991, Applicant distributed to its stockholders $9.91 per share.

3. Liquidation expenses, including accounting, legal, and tax advice (including costs of preparing, printing and mailing proxy materials and filings with federal and state regulatory agencies), were borne by Applicant and totalled $20,563.

4. Applicant filed articles of dissolution with the State of Maryland on June 28, 1991. Applicant has not other assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders, and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

[1] The staff of the Division of Investment Management notes that Applicant filed proxy materials on May 29, 1991 with the Commission. The proxy materials state that Applicant was organized primarily to provide institutional investors organized in the Federal Republic of Germany with an investment subject to favorable tax treatment. However, pursuant to a new income tax treaty between the United States and the Federal Republic of Germany, these tax advantages were eliminated. The proxy materials also indicate that the Applicant's principal shareholder advised Applicant that it intended to redeem its shares on or before July 1, 1991. In light of this anticipated redemption, the Board of Directors met to consider alternatives available to the Applicant.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-24943 Filed 10-16-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Jesup Group, Inc., Common Stock, $.01 Par Value; Warrants to Purchase Common Stock) File No. 1-8299

October 10, 1991.

Jesup Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

Jesup Group, Inc. ("Company") seeks withdrawal of these securities from the BSE because, according to the Company, the small number of stockholders and the low volume of trading make continued listing of these securities on the BSE unnecessary.

Any interested person may, on or before November 1, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24944 Filed 10-16-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping and Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before November 18, 1991. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.
OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
Title: Application for a Loan Pool.
Form No.: SBA Forms 1454.
Frequency: On Occassion.
Description of Respondents: SBA Loan Pool Assemblers.
Annual Responses: 35.
Annual Burden: 115.
Title: SBA Grants Management Reporting and Recordkeeping Requirement.
Form No.: SBA Form 1222, 1224.
Frequency: On occasion.
Description of Respondents: SBA Grant Applicants and Recipients.
Annual Responses: 1,480.
Annual Burden: 118,920.

Cleo Verbillis,

Acting Chief, Administrative Information Branch.

[FR Doc. 91–24998 Filed 10–16–91; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, will hold a public meeting from 10 a.m. to 12 noon on Tuesday, October 8, 1991, at 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles J. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202, telephone (301) 962–2054.

Dated: September 30, 1991.

Dr. Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91–24999 Filed 10–16–91; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Jackson, will hold a public meeting from 9 a.m. to 12 noon on Thursday, October 24, 1991, at the River Park Hotel, Natchez, Mississippi, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jack Spradling, District Director, U.S. Small Business Administration, 101 W. Capitol Street, suite 400, Jackson, Mississippi 39201, (601) 965–5371.

Dated: September 30, 1991.

Dr. Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91–25000 Filed 10–16–91; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Cleveland, will hold a public meeting at 9:30 a.m., on Firday, October 18, 1991, at the Administration Building—Cuyahoga Community College, 2900 Community College Avenue, Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Norma M. Nelson, District Director, U.S. Small Business Administration, 1240 East Ninth Street, room 317, Cleveland, Ohio 44199–2095, telephone (216) 522–4180.

Dated: September 30, 1991.

Dr. Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91–25001 Filed 10–16–91; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, will hold a public meeting from 10:30 a.m. on Tuesday, October 8, 1991, at The Hampton Inn, Colchester, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Kenneth A. Silvia, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05601, telephone (301) 828–4422.

Dated: September 30, 1991.

Dr. Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91–25002 Filed 10–16–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1495]

Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Wednesday, November 20, 1991 at 8:30 a.m. at the U.S. Department of State in Washington, DC. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1)(4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified security information as well as private sector physical security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 703/204–6185.

Dated: October 1, 1991.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 91-24975 Filed 10-16-91; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 91-43; Notice 02]

Public Meeting on Pedestrian Head Impact Protection

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Extension of Comment Period; Request for Comments.

SUMMARY: This notice grants a request from Advocates for Highway and Auto Safety to extend the comment period for submission of comments on pedestrian head impact protection. The comments are in response to information presented at a public meeting announced on July 17, 1991, 56 FR 32602, and held on August 20, 1991, at Wayne State University Detroit, Michigan. The comment period closing date is changed from October 15, 1991, to November 15, 1991. This notice also identifies documents currently available in the public docket on pedestrian impact protection, Docket No. 91-43, and clarifies the agency's request for public comment on the pedestrian head impact protection information discussed at the public meeting.

ADDRESSES: Comments should refer to the docket number for this notice or Docket No. 91-43, Notice 1, and be submitted to: Docket Section, room 5108, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (Docket Hours: 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Daniel, Jr., Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-4921.

SUPPLEMENTARY INFORMATION: On July 17, 1991 NHTSA published in the Federal Register (56 FR 32602) a notice announcing a public meeting on pedestrian head impact protection which was held on August 20, 1991, at Wayne State University in Detroit, Michigan. The meeting announcement stated that NHTSA is seeking comments on any and all topics discussed during the meeting. Questions and comments would be accepted after the agency's presentations at the meeting and written comments on the subject would be accepted by the agency until October 15, 1991.

The pedestrian head impact protection meeting was announced along with the agency's regular quarterly meeting relating to the agency's rulemaking, research, and enforcement programs. The notice announcing the public meeting on pedestrian head impact protection did not specify a docket number for submission of comments. Docket No. 91-43 has been established for pedestrian impact protection and the meeting announcement had been designated as Notice 1. Comments on topics discussed during the public meeting should be submitted to the Docket No. 91-43, Notice 1 or the docket for this notice (Docket 91-43, Notice 2). Docket No. 91-43 contains the transcript of the public meeting, the briefing charts handed out at the meeting, and documents comprising the agency's pedestrian head impact protection injury severity reduction benefits analysis. These documents are available for review or copy.

As stated in the public meeting announcement, NHTSA is seeking comment on any and all topics discussed during the meeting. These include the data presented by the agency on pedestrian accident and injury causation statistics and the pedestrian head impact protection research. Also, rulemaking options for a pedestrian head impact protection rulemaking proposal addressing impacts with the central hood area of passenger cars and light trucks were discussed.

The accident and injury statistics presented are taken from the Pedestrian Injury Causation (PICS) and the National Accident Sampling System (NASS) files.

The pedestrian head impact research discussion included a brief discussion of the agency's accident reconstruction project designed to correlate accident head injury severity (Probability of Death) with the Head Injury Criterion (HIC), a measure of head injury severity potential. The research presentation also discussed the head impact simulation hardware and procedures developed by the agency and the results and conclusions from several impact test projects including impact tests with the central hood area of 9 passenger cars and 3 light trucks.

The agency presented several options for a possible rulemaking proposal to address pedestrian head impacts with the central hood area of passenger cars and light trucks. Test procedure options were discussed, including the procedure for location of impact test positions and a procedure that would allow the designation of impact test positions.

The agency also presented information on the injury severity reduction benefits that might be obtained. The estimated costs of vehicle modification were also briefly discussed.

In addition to the agency's presentations, a presentation was given by Mr. Bob Arnold, representing the Motor Vehicle Manufacturers Association (MVMA). Mr. Arnold stated that any pedestrian impact protection rule must not compromise the ability of vehicle front end designs to meet existing requirements. Existing requirements include corporate average fuel economy (CAFE), Federal Motor Vehicle Safety Standards (FMVSS) requiring frontal crash tests, and resistance to damage during normal use. Mr. Arnold also expressed the opinion that the agency should more strongly pursue crash avoidance approaches to pedestrian protection such as a more rigorous enforcement of jaywalking laws and an increase in citizen education regarding pedestrian safety.

The agency is seeking comment on all the topics described briefly above and any additional relevant pedestrian head impact protection information.

After consideration of the request for extension, NHTSA has decided to extend the comment period by 30-days. The agency has concluded that a 30-day extension is warranted considering the significance and public interest in this subject.

Issued on October 10, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-24951 Filed 10-16-91; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 201
Thursday, October 17, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 22, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 24, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Bush-Quayle General Election Committee—Final Audit Report (tentative)
Advisory Opinion 1991-27: Lance Olson on behalf of the California Democratic Party
Advisory Opinion 1991-30: Frank M. Northam on behalf of Citizens for a Sound Economy, Inc.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-25208 Filed 10-15-91; 3:26 pm]
BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 10, 1991.

TIME AND DATE: 10:00 a.m., Thursday, October 17, 1991.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Drummond Company, Inc.*, Docket No. SE 90-126.
2. *Hobet Mining, Inc.*, Docket No. WEVA 91-65.
3. *Utah Power & Light Co.*, Docket No. WEST 90-320, etc.
4. *Texas Utilities Mining Co.*, Docket No. CENT 91-26.
5. *Cyprus Plateau Mining Corp.*, Docket No. WEST 91-44, etc.
6. *Drummond Company, Inc.*, Docket No. SE 90-125, etc.
7. *Zeigler Coal Company*, Docket No. LAKE 91-2.

All of these cases involve similar issues pertaining to the procedures of the Department of Labor's Mine Safety and Health Administration for proposing civil penalties under its "excessive history" policy.

It was determined by a unanimous vote of Commissioners that these items be discussed in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 91-25114 Filed 10-15-91; 2:58 pm]
BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 21, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 11, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91-25101 Filed 10-11-91; 5:02 pm]
BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 14, 21, 28, and November 4, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 14

Thursday, October 17

2:00 p.m.
Briefing on Staff Recommended Course of Action on Adhering to 10 CFR Part 52 (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule Entitled "Material Control and Accounting Requirements for Uranium Enrichment Facilities Producing Special Nuclear Material of Low Strategic Significance" and Conforming Amendments to 10 CFR Parts 2, 40, 70, and 74

Friday, October 18

9:00 a.m.
Briefing on IIT Report on Nine Mile Point (Public Meeting)
10:00 a.m.
Briefing on GE-Wilmington Incident (Public Meeting)

Week of October 21—Tentative

Tuesday, October 22

2:00 p.m.
Briefing on Status of Yankee Rowe (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 28—Tentative

Tuesday, October 29

1:30 p.m.
Briefing on Status of Advanced Reactor Programs (Public Meeting)

Wednesday, October 30

10:00 a.m.
Briefing on Site Decommissioning Management Plan (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
3:30 p.m.
Briefing on Status of Emergency Planning Issues for Pilgrim (Public Meeting)

Week of November 4—Tentative

Tuesday, November 5

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: October 11, 1991.

William M. Hill, Jr.,
Office of the Secretary.

[FR Doc. 91–25152 Filed 10–15–91; 2:58 p.m.]
BILLING CODE 7590–01–M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 22, 1991, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

(1) Backlog Review Task Force Report.
(2) Long-Range Plan for Taxation Processing—Briefing.
(3) Federal Systems Integration and Management Center (FEDSIM)—Fiscal Year 1992.
(4) Inter-Agency Meetings.
(5) Request to Post Vacancy, Debt Recovery Manager.
(6) Performance Review Board Membership.
(7) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
(8) Regulations—Part 203, Employees Under the Act.
(9) Regulations—Parts 209, 211 and 345, Railroad Employers Reports and Responsibilities; Creditable Railroad Compensation; Employers' Contributions and Contribution Reports.
(10) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: October 11, 1991.

Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 91–25213 Filed 10–15–91; 3:26 pm]
BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 56, No. 201
Thursday, October 17, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

[Amendment 28]

Determination of Eligibility for Free and Reduced Price Meals and Free Milk in Schools; Free and Reduced Price Eligibility Criteria

Correction

In rule document 91-17520 beginning on page 33857 in the issue of Wednesday, July 24, 1991, make the following corrections:

1. On page 33860, in the third column, amendatory instruction 2. should read: "2. In § 245.2 Definitions, paragraph (a-4) introductory text and paragraphs (a-4) (1) through (4) are revised to read as follows:".

§ 245.6 [Corrected]

2. On page 33861, in the first column, in § 245.6(a)(1), add "* * *"after "approved.".

§ 245.6a [Corrected]

3. On the same page, in the same column, in § 245.6a(a), add "* * *" after "application.".

BILLING CODE 1505-01-D

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Correction

In notice document 91-11878 appearing on page 23048, in the issue of Monday, May 20, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91-11818" should read "FR Doc. 91-11878".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notification; Bell Communications Research, Inc.

Correction

In notice document 91-24144 appearing on page 50728 in the issue of Tuesday, October 8, 1991, in the second column, in the first full paragraph, in the eighth line, and in the third full paragraph, in the first line "PairGrain" should read "PairGain".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0029-91]

RIN 1545-AP70

Computation and Characterization of Income and Earnings and Profits Under the Dollar Approximate Separate Transactions Method of Accounting (DASTM)

Correction

In proposed rule document 91-16827 beginning on page 32525, in the issue of Wednesday, July 17, 1991, make the following corrections:

§ 1.904-4 [Corrected]

1. On page 32528, in the first column, in § 1.904-4(j), in the third line, "(e))." should read "(e)."

§ 1.985-3 [Corrected]

2. On the same page, in the third column, in § 1.985-3(b)(3), in the third line "dollars" was misspelled.

3. On page 32529, in the third column, in § 1.985-3(c)(9) *Example 1*, in the tenth line "accrued." should read "accrued).".

4. On page 32531, in the first column, in § 1.985-3(d)(2), in the fifth line "as" should read "(as".

5. On the same page, in the second column, in § 1.985-3(d)(3)(i), in the third line remove "sheet".

6. On page 35232, in the second column, in § 1.985-3(e)(4), in the heading, in the second line "*assets)--*" should read "*assets--*".

7. On the same page, in the same column, in § 1.985-3(e)(4)(i), in the last line the equation should read "[(bb + eb) ÷2] × [er-br]".

8. On page 32533, in the first column, in § 1.985-3(e)(6)(i), in the fifth line the equation should read "[(bl + el) ÷ 2)] × [br - er]".

9. On the same page, in the same column, in § 1.985-3(e)(7), in the 17th line "§ 861-9T" should read "§ 1.861-9T".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8352]

RIN 1545-AK26

Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes

Correction

In rule document 91-15026 beginning on page 29432, in the issue of Thursday, June 27, 1991, make the following corrections:

1. On page 29433, in the first column, in the fourth line "283(h)(6)" should read "382(h)(6)".

§ 1.382(a)-1 [Corrected]

2. On the same page, in the third column, the section number is incorrect and should read as shown above.

§ 1.382(b)-1 [Corrected]

3. On the same page, in the third column, the section number is incorrect and should read as shown above.

§ 1.383-3 [Corrected]

4. On page 29434, in the second column, in **Par. 10.**, in paragraph number 3, in the second line "§ 1.393-3A" should read "§ 1.383-3A".

BILLING CODE 1505-01-D

federal register

Thursday
October 17 1991

Part II

Department of Transportation

Coast Guard

46 CFR Parts 30, 151, 153, and 197
Benzene; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 151, 153, and 197

[CGD 88-040]

RIN 2115-AD08

Benzene

September 30, 1991.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations by revising the special carriage requirements for benzene and benzene mixtures and by adding new regulations concerning occupational exposure to benzene vapor on vessels inspected by the Coast Guard. These regulations are being amended to incorporate the lower benzene exposure levels adopted by the Occupational Safety and Health Administration (OSHA) to provide workers in the marine mode with the same protection as their land-based counterparts. Use of the lower exposure levels is expected to result in a 90% lowering of the number of leukemia deaths associated with the inhalation of benzene vapors.

DATES: This rule is effective on January 15, 1992. The Director of the Federal Register approved as of January 15, 1992 the incorporation by reference of certain publications listed in the regulations.

FOR FURTHER INFORMATION CONTACT: Dr. Alan L. Schneider, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267-1217.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Dr. Alan L. Schneider, Project Manager, and Mr. Stephen H. Barber and Mr. Nicholas Grasselli, Project Counsels, Office of Chief Counsel.

Regulatory History

On January 29, 1990, the Coast Guard published a notice of proposed rulemaking entitled "Benzene" in the **Federal Register** (55 FR 2978). The Coast Guard received 22 letters commenting on the proposal. No public hearing was requested and none was held.

Background and Purpose

On June 4, 1984, the Coast Guard published an Advance Notice of Proposed Rulemaking (49 FR 23085) to revise the requirements for the carriage of benzene and other bulk dangerous cargoes on unmanned barges. Because of opposition by groups in the marine industry and litigation relating to benzene rules proposed by OSHA, the Coast Guard put this rulemaking in abeyance.

On September 11, 1987, OSHA published a final rule (52 FR 34562) which reduced the permissible exposure limit (PEL) for benzene vapors from an 8-hour time-weighted average (TWA) of ten parts of benzene per million parts of air (10 ppm) to an 8-hour TWA of 1 ppm. The OSHA standard also included an action level of 0.5 ppm and a short-term exposure limit (STEL) of 5 ppm averaged over a 15 minute period. OSHA took this action to reduce substantially a significant health risk that results from exposure to benzene and benzene vapors. OSHA estimated that the reduction in the TWA from ten to one ppm will result in a 90% decrease in the number of deaths caused by leukemia to those workers exposed to benzene vapors.

Similarly, the Coast Guard anticipates providing the same level of protection for workers exposed to benzene vapor in the marine workplace as is provided by OSHA's regulations for factory workers. The Coast Guard currently restricts benzene vapor exposure to an 8-hour time-weighted average of 10 ppm for seamen on board inspected barges and self-propelled vessels.

This final rule establishes a new subpart C of 46 CFR part 197, for occupational exposure to benzene vapor, that would include OSHA's limits within a performance standard. Unlike OSHA's regulations, these proposed regulations do not mandate the methods to be used in complying with the performance standard, but would allow any method or combination of methods to be used. These methods may include, but are not limited to, the following:

(1) Engineering controls (e.g., vapor control and recovery systems, closed loading systems, or controlled venting systems);

(2) Revised work practices; or

(3) Personal protective devices.

In addition, this final rule amends the special carriage requirements for benzene and benzene mixtures found in subchapters D and O of title 46 CFR chapter I to reflect the regulations in proposed subpart C.

OSHA recently extended the applicability of its standard to those liquid mixtures containing more than 0.1% benzene (by weight). The Coast Guard is retaining a level of 0.5% benzene in liquid mixtures in this final rule. The Coast Guard will examine the results from exposure monitoring on board vessels. If these results indicate dangerous benzene vapor concentrations above the action level (benzene liquid concentrations of approximately 0.5%), the Coast Guard will consider lowering this threshold to a level that will reduce such dangerous vapor concentrations.

Discussion of General Comments

(1) During the comment period, a total of 22 letters were received. Beginning with this general section, these comments are arranged by issue or section or paragraph of the rule addressed by the comment.

(2) One comment requested an extension to the comment period.

The Coast Guard denied the request as the comment promised a response before a notice of extension could be granted. The response was received promptly, and is discussed in this Preamble.

(3) No comments requested either a public hearing or an Advisory group meeting.

Discussion of the Preamble

1. *Toxicity studies.* One comment agreed with the use of a single Permissible Exposure Limit (PEL) for both land and for marine workers rather than two PEL's. However, the comment pointed out that the Texaco Mortality Study provides very limited data on which to base the Coast Guard's rulemaking.

The Coast Guard accepts this point, but presently considers these data on intermittent liquid benzene exposures as the best available.

2. *Performance approach.* (a) Five comments supported the proposed rule's performance-based approach rather than regulations specifying a required course of action (for example, requiring vapor recovery systems), some giving reasons why the performance-based approach is superior.

(b) Another comment disagreed with the approach, stating that use of respirators should be restricted to emergencies and that otherwise engineering controls be used in all nonemergency situations.

The Coast Guard's position is that respirators are effective in reducing the risk to personnel at all times. Additionally, the nature of the marine industry makes universal application of engineering controls (e.g., vapor recovery systems) impractical and very costly, particularly for small terminals.

3. *Non-malignant disease:* One comment objected to the estimated benefit of 98 fewer deaths from non-malignant diseases over the next 45 years, based on the fact that there were no data for any such disease caused by

benzene vapor exposures below 25–40 ppm. Since current rules prohibit exposures above 10 ppm, the comment concludes that there will be no such benefit from lowering the exposure limits.

The Coast Guard estimated the number of fatalities based on formulae developed by OSHA; this method is a standard estimation technique.

4. *Adjustment of TWA, STEL, and PEL for nonstandard work day and work week.* (a) Four comments agreed with the application of a time-weighted average (TWA) based on standard 8-hour work days and 40-hour work weeks to a marine work schedule that usually is different. Three comments agreed with the proposed rule's approach, saying that in the absence of data, the Coast Guard should apply the TWA that OSHA used.

(b) One comment urged that the TWA be clarified, giving a method for calculating the TWA for 4, 6, and 8 hour watches, which, due to multiple watches in the day or 7 watches a week, could result in exposures of more than 8 hours a day or 40 hours a week. The comment suggested considering the Southwest Research Institute's proposals for adjusting PEL's. This would, for longer work days, reduce the PEL to reduce exposures.

The Coast Guard recognizes the difficulty of applying an 8-hour day, and a 40-hour week standard TWA to unconventional work schedules. However, the STEL and the TWA take into account to some degree unconventional work schedules. For example, the STEL prevents a worker from spending 15 minutes a day in a 40 ppm environment. The Southwest Research Institute's proposals for adjusting PEL's have not been scientifically verified. Furthermore, the Coast Guard concluded that the benefits of aligning limits of marine exposure with OSHA's limits outweighed any benefit from creating a unique set of limits for marine exposure.

5. *General applicability.* One comment questioned why towboat personnel are being included in these regulations, contending that while there are significant concerns with terminal workers and tankermen (in many instances not vessel employees but terminal employees), personnel on the towboat are exposed to benzene vapor only for a short period during making and breaking lines.

The Coast Guard notes that, since inland towboats are not inspected vessels, this rulemaking does not apply to them (nor does it apply to terminal employees). However, OSHA's benzene standards may be applicable depending on circumstances. When nonemployees board an inspected vessel, they are subject to the nonemployee requirements of § 197.530.

6. *Exposure levels.* One comment objected to the TWA of 1 ppm, proposing instead the use of 0.1 ppm, with a STEL of 1 ppm. The comment suggested that at 0.1 ppm the leukemia risk would be indistinguishable from the risk faced by workers not exposed to benzene.

The Coast Guard is aligning its limits with those of OSHA which are expected to reduce the risk by 90%. Further reductions of exposure to benzene vapor concentrations would likely require very expensive engineering controls.

7. *Regulatory analysis.* (a) One comment challenged the cost estimates for vapor control systems on coastal tank barges and at marine terminals, stating that the actual costs will be much higher than those contained in the NPRM.

The Coast Guard is using the same costs in this rule as used in the NPRM for Vapor Control Systems, CGD 88–102. However, the Coast Guard will amend the preamble to reflect this by changing the cost figures to "$250,000" and to "1–2 million dollars."

(b) Three comments pointed out that only cargo transfer costs are included in the cost evaluation, ignoring compliance costs while the vessel is underway.

The Coast Guard's economic analysis identified only major costs. This analysis is based on cargo transfers when the exposures are at their highest. Once installation costs and such annual costs as medical monitoring and exposure reduction are established, the smaller costs (for example, those while the vessel is underway) can be neglected since they are negligible in comparison to these installation and annual costs.

(c) Three comments asked for more details on the factors and costs that make up the economic analysis. Another comment argued that the cost estimate was too low and that additional analysis was needed.

The Coast Guard's position is that the economic analysis provides reasonable cost estimates based on major cost elements. The analysis is part of this regulatory docket and is available for inspection at Coast Guard Headquarters.

Discussion of Comments and Changes to the Regulations

1. *46 CFR 30*

One comment suggested that the Coast Guard publish an annual Navigation and Vessel Inspection Circular (NVIC) listing all cargoes containing 0.5% or more benzene liquid by volume to help carriers know which cargoes are regulated.

The Coast Guard considers this to be impractical, since the benzene concentration in many cargoes can vary from one vessel load to the next. It is the responsibility of the individual offering the cargo for shipment (usually the cargo owner) to inform the carrier of the concentration of liquid benzene in the cargo.

2. *Section 151.05–1*

One comment pointed out that closed gauging is much more effective in reducing benzene vapor exposures than restricted gauging; in tests, restricted gauging led to exposures greater than the STEL. It recommended that closed gauging be required rather than recommended.

The Coast Guard agrees that closed gauging is superior to restricted gauging in that with closed gauging the exposure is lower. However, the Coast Guard's approach is that if restricted gauging in conjunction with revised work practices or use of respirators can reduce the exposures to a safe level, closed gauging is not required.

3. *Section 197.501(a)*

(a) One comment asked whether these regulations apply to foreign flag vessels. Noting that a good proportion of the cargo transfers in U.S. waters would not be subject to these standards, the personnel involved will not be covered if the rules do not apply to these vessels.

The Coast Guard agrees that all personnel should be protected from benzene vapor exposure. However, because these regulations are designed to protect crew members from occupational safety hazards (which are the responsibility of the flag state) rather than, for example, to prevent pollution (which is a responsibility of the U.S. as well as the flag state), the Coast Guard is not applying these requirements to foreign flag vessels. Additionally, by the nature of the marine industry, such an application would not be feasible. The Coast Guard plans to bring this to the attention of the International Maritime Organization for discussion on an international basis.

(b) The comment also asked for clarification on the applicability of the rule to vessels which are subject to inspection but which do not have a valid Certificate of Inspection, since there will always be a number of vessels not subject to these rules while in drydock or while undergoing repair.

The Coast Guard's position is that the rules apply only to vessels with current Certificates of Inspection. However, protection from benzene vapor exposure would not lapse for vessels without valid Certificates; vessels in dry dock and under repair are subject to OSHA's regulations.

(c) This comment further argued that restricting this rulemaking to vessels carrying benzene liquid as cargo in bulk was too restrictive since benzene liquid is carried aboard vessels as ship stores (e.g., paint thinner) and for use in industrial operations.

The Coast Guard agrees that exposure to benzene vapor from sources other than bulk cargo are potentially hazardous. However, the Coast Guard is approaching the major problem first, bulk cargo transportation. At a later time, other sources of exposure will be addressed.

(d) Finally, the comment asked for clarification on the jurisdiction between Coast Guard and OSHA over benzene and other related issues (e.g., entry into confined spaces).

The Coast Guard notes that statutory law and judicial decisions ultimately determine jurisdictional issues. The Coast Guard's position is that for occupational health and safety issues, the Coast Guard has jurisdiction over personnel aboard Coast Guard certificated vessels, including tank barges. OSHA has jurisdiction in other locations, including such areas as workers in shipyards and certain repair situations, and petroleum storage and transfer facilities.

(e) Three comments suggested changing the word "products" to "liquids" for consistency with the benzene definition in § 197.505. This would avoid excluding such liquid benzene containing mixtures as crude oil, that are not products.

The Coast Guard agrees with this point, and modified the wording in § 197.501(a).

(f) One comment suggested adding the words "subject to parts 151 and 153 of this subtitle" at the end of the third line.

The Coast Guard's position is that such wording is not necessary. As written, there are no exceptions—all inspected vessels carrying benzene or benzene mixtures (with concentrations above 0.5%) in bulk are covered by these rules.

4. *Sections 153.1060 and 197.501(b)*

One comment proposed lowering the threshold for liquid benzene concentration from 0.5% to 0.1%, citing their experience with 0.2% benzene in crude oil.

The Coast Guard used 0.5% to align this rule with OSHA's 1987 regulations. Effective September 11, 1990, OSHA extended the applicability of its standard to those liquid mixtures containing more than 0.1% by weight benzene; however, the Coast Guard will retain a level of 0.5% benzene in such mixtures for this rulemaking. The Coast Guard will examine the results from exposure monitoring on board vessels. If these results indicate dangerous benzene vapor concentrations above the action level (benzene liquid concentrations of approximately 0.5%), the Coast Guard will consider lowering this threshold to a level that will reduce such dangerous vapor concentrations. The threshold listed in the regulations does not prevent companies from voluntarily adopting a lower threshold if their policy is to achieve as low a benzene vapor concentration as possible.

5. *Section 197.505 Definitions*

"Action level". One comment suggested adding to the end of this definition "from vessels regulated hereunder." The comment stated that with this clarification only those cargoes with 0.5% or more benzene would be regulated by the rule, and exposures at or above 0.5 ppm would not be considered if the benzene concentration in the liquid was below 0.5%.

The Coast Guard agrees that wording similar to that proposed would help to avoid confusion, and modified § 197.505 of the rule accordingly. Concerning the second portion of the comment, the Coast Guard's position is that in nearly all instances liquid benzene concentrations below 0.5% will give rise to benzene vapor concentrations below 0.5 ppm.

"Employee". One comment proposed adding the words "terminal, cargo, owner, or consignee" suggesting that everyone aboard would be protected from benzene vapor exposure. The comment pointed out that there are numerous people working on vessels that are not employed by the vessel owner, charterer, managing operator, or agent.

The Coast Guard agrees that there are many people working on vessels that fall outside the rule's definition of the employee. However, there is no need to change the definition because these personnel are covered as nonemployees in § 197.530. They are protected by the rule since the person in charge is responsible for certain precautionary measures with respect to these individuals.

"Employer". One comment proposed adding the words "or any association, union, or other organization with which individuals serving in the marine industry, or their employers, are associated." The comment contended that this addition would allow unions to share some of the surveillance and health responsibilities with employers.

The Coast Guard agrees that cooperation between labor and management would facilitate compliance with these rules, and there is nothing in these rules that prevent unions from sharing responsibility if management and labor agree. However, the Coast Guard needs to identify a single responsible party, and the employer is in the best position to safeguard the health of employees.

"Operations involving benzene". Four comments requested a definition for this term which was used throughout the proposed rule. They felt the need for a definition to distinguish between those employed to work with vessels carrying benzene and those individuals who are in the area as vendors or repairmen who have nothing to do with cargo operations.

The Coast Guard agrees and added a new definition to § 197.505.

"Person-in-charge". One comment recommended expansion of the proposed definition. For self-propelled vessels, it suggested adding "licensed operator" since many towboat operators have operator's licenses rather than master's licenses. For barges, the comment suggested additional language to cover all circumstances, including when a vessel is stationary and when it is underway.

The Coast Guard agrees with these suggestions, and expanded the definition in § 197.505.

"Time weighted average exposure limit". (a) Four comments said that the abbreviation TWA commonly means an average exposure, not a limit. One of these comments suggested using TWAL (Time Weighted Average Exposure Limit).

The Coast Guard disagrees; TWA is commonly used in the sense of a limit. Since TWA is carefully defined, there should be little chance of confusion.

(b) One comment wanted further elaboration of the definition, to include the concept of a continuous 8 hour period or other parameters. The comment emphasized the need for the term to be well defined.

The Coast Guard recognizes the need to be precise in this definition. However, many marine personnel work multiple shifts of 4 or 6 hours in a day, so a continuous 8 hour period is inappropriate. For those work schedules involving less than an 8 hour exposure

over a 24 hour period, the benzene vapor exposure should be averaged over 8 hours, using a zero exposure level during the period of nonexposure. For workers exposed for more than 8-hours in a day, the benzene vapor exposure should be adjusted. The Coast Guard is amending the definition in § 197.505 to clarify this point.

"Vapor control or recovery system".

(a) Three comments proposed changing the words "prevent personnel exposures to" to "collect" so as to reflect the fact that vapor recovery systems are intended to protect the environment by collecting vapors.

The Coast Guard agrees with the proposal, and will amend the definition in § 197.505.

(b) Two comments proposed that this rulemaking allow vapor recovery systems to reduce benzene vapor exposures.

The Coast Guard points out that the rule already allows companies to use vapor recovery systems to reduce benzene vapor exposures.

6. *Section 197.515(a)*

One comment felt there would be confusion with the abbreviation TWA for time weighted average exposure limit. It suggested using PEL or TWAEL (Time Weighted Average Exposure Limit).

The Coast Guard disagrees. The term PEL refers to both TWA and the STEL, since both must be satisfied, so it would be inappropriate to use it in place of TWA by itself. The Coast Guard selected terminology consistent with that used by others in this field.

7. *Section 197.515(b)*

Four comments objected to the requirement that exposures at the STEL not occur more than four times a day and that the exposures be at least one hour apart. They stated that these requirements come from the introduction to the American Congress of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLV) booklet, and that the ACGIH intended this as a general suggestion rather than a "requirement." They pointed out that these requirements exceed those of OSHA and would impose a major additional burden on the marine industry.

The Coast Guard agrees that its requirements for exposures at the STEL exceed those of OSHA but notes that the marine environment is unique in that personnel are often exposed to high concentrations of benzene vapor for short durations. The Coast Guard concluded that this may present a greater risk to personnel than lower exposures for standard 8 hour days, and that it is prudent to adopt STEL restrictions. Without such STEL restrictions, exposures could easily (and legally) be at the STEL for most or all of the time the worker was exposed. For example, the 8 hour TWA (1 ppm) requirement could be satisfied with a 1.6 hour exposure at the STEL (5 ppm) and 6.4 hours with no benzene vapor exposure. The Coast Guard's position is that these exposure conditions are dangerous and for this reason adopted the provisions specified in the introduction to the TLV booklet.

8. *Section 197.525*

(a) One comment suggested that the use of the phrase "that person's vessel" implied that the person in charge was assigned to or owned the vessel in question.

The Coast Guard's position is that the person in charge either owns or has been given responsibility by the employer (the owner, operator, lessee, etc.) for that vessel, and hence is assigned to and responsible for that vessel.

(b) One comment objected to making the person in charge responsible for compliance with this rulemaking since that person is usually a tankerman for barges. The comment argued that tankermen are not the appropriate choice for this responsibility, since they either are not adequately trained, are not sufficiently knowledgeable, or do not have sufficient authority to perform this function.

The Coast Guard revised the definition of person in charge in § 197.505 to further clarify who is the responsible individual on board the vessel. If the person in charge, however, cannot perform this function adequately, then the employer must either train the employee to do so or put another individual in charge who can carry out this responsibility with sufficient knowledge and authority.

(c) Two comments raised the question of whether the person in charge had responsibility for Federal, State, and local government personnel.

The Coast Guard rewrote § 197.530(a) to clarify the point that the person in charge is not responsible for governmental personnel. In general, the Coast Guard does not have jurisdiction over governmental personnel other than its own. Therefore it is the responsibility of each governmental agency to protect its own employees. However, Coast Guard personnel will certify that they have undergone medical testing and monitoring equivalent to that required for nonemployees who are not Federal, State, or local government personnel (§ 197.530 and 29 CFR 1910.1028).

(d) One comment advanced the position that a person other than an employee must provide his or her own protective clothing and equipment.

The Coast Guard rewrote § 197.530(a) to require that this equipment meet certain testing requirements, making it impractical for the employer to furnish the equipment for the nonemployee. Usually the clothing and equipment are supplied by the nonemployee's company; however, the employer can supply these if the employer has clothing and equipment (particularly the correct model of respirator) that will fit the nonemployee.

(e) One comment said that the record should be clarified that no Federal, State, or local official has the authority to force the person in charge to take an action in violation of the regulations.

The Coast Guard agrees, pointing out that, except in some emergency situations, this is true for all regulations.

9. *Section 197.530*

(a) One comment suggested that this section seemed to say that Coast Guard inspectors could not monitor cargo transfers.

The Coast Guard's position is that this is not the case. Before Coast Guard personnel are allowed to enter areas containing benzene or benzene vapors, they undergo training, are medically monitored, and are issued proper clothing, equipment, and respirators. Internal Coast Guard procedures are at least equivalent to those in this rule.

(b) One comment asked who is responsible for medical surveillance of third party personnel (nonemployees) not subject to OSHA's standards.

The Coast Guard's view is that the employer of the nonemployee is responsible for medical surveillance.

(c) Another comment asked whether, in those cases where the employer installed engineering controls, third party personnel would have the authority to order manual or visual gauging that would expose employees to benzene vapor in harmful quantities.

The Coast Guard's position is that these personnel can request manual or visual gauging for determining cargo quantities or for taking cargo samples but that the procedure used must meet the exposure standards in this part. All employees and nonemployees involved in the operation will need respirators and personal protective equipment that meet the standards outlined in this rulemaking.

(d) This comment also asked whether U.S. flag vessels in foreign ports have to

obey foreign authorities even if it means bypassing engineering controls.

The Coast Guard notes that in such cases the person in charge can take measures other than engineering controls to prevent exposure, such as the use of respirators and personal protective clothing and equipment.

(e) Another comment argued that these rules placed an undue burden on the employer to perform compliance checks on third party personnel (both governmental and nongovernmental), and that since workers, other than crew on Coast Guard certificated vessels, were covered by OSHA's rules, these checks were redundant.

The Coast Guard's position is that such compliance checks are necessary for protecting non-governmental third party personnel (governmental third party personnel are covered by their employer), as specified in § 197.530 and § 197.535. Note that these compliance checks constitute only examination of the written certification. When on certificated vessels, nonemployees are covered by Coast Guard rules, not OSHA's. The Coast Guard does not believe it is an undue burden to perform compliance checks on these personnel.

10. *Section 197.530(a)(2)*

One comment pointed out that there is an inconsistency between paragraphs §§ 197.530(a)(2) and 197.560(a)(2) in that the former requires a physician to conduct the medical examination, while the latter requires the examination to be carried out by a physician or under the supervision of a physician.

The Coast Guard agrees that there is an inconsistency and that all physical examinations can be effectively carried out either under the supervision of a physician or by a physician. The final rule reflects this by modifying § 197.530(a)(2).

11. *Sections 197.530(a) (3) and (4)*

The comment proposed adding "46 CFR" in the references to "§§ 197.550(b) and 197.550(c)" to prevent ambiguity and to parallel the use of 29 CFR when referencing OSHA's rules.

The Coast Guard followed the current Federal Register and Code of Federal Regulations style manual. The "Title CFR" citation is not used when referencing title 46 but is included when referencing other Titles.

12. *Section 197.530(c)*

(a) Three comments objected to the requirement that, before an individual engages in a benzene operation, that person or a representative of the entity employing that person must submit a copy of the health and equipment certification to the person in charge of the vessel. These comments proposed replacing "submit" with "have a copy of the certification available for review" to reduce the recordkeeping burden for the person in charge.

The Coast Guard agrees it is not necessary to submit a copy of the certification to the person in charge. It is, however, necessary that the person have the certification available, and that the person in charge examine it to ensure the individual meets all of the requirements in § 197.530. The Coast Guard revised § 197.530 to reflect this. Ths certification can be as simple as the sample form provided in Appendix F and as small as a wallet card.

(b) One comment also sugested removing "of the vessel" from the last line, without giving a reason.

The Coast Guard's position is that these words are needed to avoid ambiguity over who must receive the certification. There may be more than one "person in charge" during benzene operations, e.g., one in charge of the terminal facility and one in charge of the vessel.

13. *Section 197.535*

(a) Two comments objected to the requirement that a regulated area be established when the benzene vapor concentration exceeds the PEL, rather than establishing a regulated area based on actual worker exposure levels, as with OSHA's rules.

The Coast Guard notes that decks of vessels are open areas and therefore benzene vapor concentrations will fluctuate to a much greater degree than in a typical building regulated by OSHA. In addition, workers conducting different operations will not be present at the same time. For these reasons, the Coast Guard established regulated areas based on benzene vapor concentrations rather than exposures.

(b) Three comments objected to the requirement for a posted sign with the wording "RESPIRATORS REQUIRED," saying that it would be a burden on the employer. For example, if the exposures normally do not exceed the PEL, the employer may not own respirators.

The Coast Guard notes that § 197.535 applies only when the benzene vapor concentration exceeds or is likely to exceed the PEL. If through engineering controls or other methods, the concentration does not exceed the PEL, the person in charge need not establish a restricted area and no signs need to be posted. However, if engineering controls are not used and benzene vapor concentrations exceed the PEL, both an effective warning and protection for workers are required.

(c) Another comment noted that detector tubes cannot accurately measure low benzene vapor concentrations when other hydrocarbon vapors are present, and that other means that can be used aboard vessels do not give immediate results. The comment suggested employers use data from the initial monitoring and/or periodic monitoring to determine the boundaries of regulated areas.

The Coast Guard agrees with the comments on benzene vapor concentration detection, and accepts that for cargoes in which benzene liquid is mixed with other hydrocarbons, prior monitoring is an effective method for determining the benzene vapor concentration. The final rule authorizes this approach.

(d) Another comment held that the Coast Guard was not strict enough. The comment proposed that all unmanned cargo decks should be designated as restricted areas whenever a barge carries cargoes or cargo residues regulated by this rule. This designation would therefore be independent of the benzene vapor concentration, with workers required to have respirators and protective clothing when entering restricted areas.

The Coast Guard disagrees, since this would be overly restrictive and not cost effective. This would designate all such cargo decks as restricted areas, even if they had a low benzene vapor concentration.

14. *Section 197.535(b)*

Eight comments objected to the requirement that no one enter a restricted area alone, particularly an open deck, due to the labor cost involved and the unnecessary exposure to a second worker. One comment argued that a "buddy" system is justified where entry into spaces or areas pose an immediate risk, particularly confined spaces—but that the requirement was unreasonable for vessels carrying benzene, particularly on open decks. The comment contended that the "buddy system" would result in doubling the number of workers exposed to benzene vapor. Another comment proposed language requiring that, rather than having one person accompany another, the second person should remain in constant contact with the person entering the regulated area. Furthermore, the comment proposes that there be another person at the point of access for all confined space entries.

The Coast Guard intends that there be another worker nearby to assist in the event of a problem, and not that a second worker be exposed. The second

individual need not be a vessel employee; the second individual could be a terminal employee. This is not a significant burden since normally there is a terminal employee on the dock and a vessel employee on the vessel during cargo transfer. Normal confined space entry procedure is to have a second worker at the point of access. The final rule contains wording to this effect, incorporating the suggestions of the last comment.

15. *Section 197.535(c)*

Eight comments objected to the requirement for barricades or other devices used to indicate the boundaries of restricted areas. The comments claimed that these barricades or devices are unnecessary, particularly when entry to a vessel is restricted to authorized personnel.

The Coast Guard acknowledges the burden wooden or metal barricades could impose, and amended the final rule to allow painted areas or equivalent marking devices.

16. *Section 197.540(a)(1)*

Three comments suggested that the required personal exposure monitoring carried out on one vessel should be applicable to all sister ships, providing that all conditions are the same.

Although conditions on board sister ships cannot be identical, the Coast Guard agrees that if cargo, equipment, and operations are nearly the same, results from exposure monitoring for one ship can be used for others. The final rule incorporates this concept.

17. *Section 197.540(a)(3)*

Three comments suggested replacing the term "STEL" with "short term exposure," since the workers are being monitored to determine the exposure level rather then to determine an exposure limit.

The Coast Guard agrees that what is being monitored is an exposure level and not an exposure limit, and will change "STEL" to "short term exposure level" in this section.

18. *Section 197.540(a)(4)*

Two comments proposed deleting the entire paragraph, since there are many parameters determining the level of benzene vapor exposure, not just the benzene liquid concentration in the cargo.

The Coast Guard included this provision to reduce the burden on the industry. With all conditions being equal, a liquid cargo containing a lower concentration of liquid benzene will give rise to a lower vapor concentration than a cargo with a higher liquid benzene concentration.

19. *Section 197.540(a)(5)*

(a) Three comments advocated replacing the term "adverse * * * operation" with "weather conditions which will aggravate benzene exposure." The comments suggested that this would make explicit the requirement to test during those periods when the weather would maximize benzene vapor exposures and not during bad weather with winds which would minimize benzene vapor exposures.

The Coast Guard incorporated this suggestion into the final rule by revising § 197.540(a)(5).

(b) Two comments argued that the two sentences in this paragraph were confusing. The first requires testing during weather conditions typical of benzene operations while the second requires testing during weather conditions likely to maximize benzene vapor concentrations. Both comments recommended rewriting the paragraph.

The Coast Guard modified the wording in § 197.540(a)(5) to emphasize the fact that this is a two step process. In a clearer fashion, the rule now requires as a first step that the initial monitoring be performed during typical weather conditions. As a second step, if the monitoring indicates that benzene vapor concentrations could exceed the PEL, the rule requires additional monitoring for weather conditions likely to produce high benzene vapor concentrations (e.g., low winds, high temperatures).

(c) One comment asked for a definition of "normally high" and pointed out that the proposed rule required monitoring under one of three conditions, "low wind, stable air, or high temperature," while paragraph § 197.540(c) required monitoring for only one set of conditions, sampling during July or August.

The Coast Guard rewrote this section to eliminate the wording "normally high." To clarify the conditions under which periodic monitoring must be conducted, the Coast Guard also rewrote § 197.540(c). In addition, there may be instances where seasonal variations in weather result in significantly different benzene vapor concentrations. The personal exposure reduction program can take these variations into account but must be supported by both initial and periodic monitoring during the year. The Coast Guard renumbered § 197.540(d)(3) to § 197.540(d)(4) and added a new § 197.540(d)(3) to account for such cases.

20. *Section 197.540(a)(6)*

(a) One comment suggested deleting the paragraph and replacing it with a reference to Appendix D or to another equally effective test method.

The Coast Guard did not intend to specify a mandatory test method, as there are presently several effective test methods. The Coast Guard's position is that specifying the accuracy of the test method is important, and a minimum level of accuracy must be mandatory. Appendix D is advisory only and is not referenced as a mandatory requirement.

(b) Two comments argued that the accuracy requirements were unnecessary.

The Coast Guard disagrees. Without minimum levels of accuracy there is no assurance that monitoring will be performed in a correct manner. However, there is an ambiguity in the proposed rule. The words "All monitoring" actually refers to the methodology for determining the concentration from the sampling device, rather than the accuracy of the sampling process. To remove this ambiguity, § 197.540(a)(6) was rewritten.

21. *Section 197.540(b)*

(a) Five comments criticized the requirement that only the results of monitoring conducted within one year before the effective date of the final rule could be used. They felt that initial monitoring performed to satisfy OSHA's requirements since September 1987 should be acceptable to the Coast Guard.

The Coast Guard agrees and this change is reflected in the final rule in § 197.540(b).

(b) Two comments asked for six months to complete the initial monitoring, instead of sixty days provided in the proposed rule. The comments cited the complexity of monitoring exposures over a wide range of conditions and geographical locations.

The Coast Guard accepts that sixty days may be insufficient, but concludes that six months is excessive. The period for initial monitoring was extended to three months in revised § 197.540(b).

(c) One comment asked whether there is need to perform initial monitoring for each vessel, or whether the Coast Guard would accept initial monitoring of typical benzene operations. If the latter, there would not be any need for initial monitoring of each tank barge.

The Coast Guard intends that all barges and ships undergo initial monitoring, except for those vessels of the same class where the procedures,

equipment, work practices, cargo, and control equipment are nearly identical. In that case, only one vessel of each would have to undergo initial monitoring.

22. *Section 197.540(c)*

(a) One comment said that there was no need for annual monitoring except when there had been a change in procedure, equipment, or work practices. Another comment objected to the idea of annual monitoring for those cases where the initial monitoring found low concentrations or where engineering controls were adopted.

The Coast Guard disagrees and views the annual monitoring as an auditing procedure to ensure that conditions have not changed or that engineering controls are still effective.

(b) Three comments questioned the timing of the annual monitoring in July and August, suggesting that the requirement should explicitly require monitoring during times that would lead to the highest benzene vapor concentration.

The Coast Guard specifies tests during July and August since they are likely to produce the highest vapor concentrations.

(c) Another comment advanced the position that annual monitoring was insufficient. Since there are now passive monitoring devices for humans, employees should carry these devices at all times.

The Coast Guard disagrees. Currently, available passive devices must be sent to laboratories for analysis and interpretation. Requiring industry to use this procedure for year round monitoring would be expensive. Annual monitoring provides good results and is more cost effective. Companies, however, may wish to perform additional testing using passive monitors.

23. *Section 197.540(d)(1)*

Four comments argued that there was no need to monitor benzene vapor exposures if changes in conditions would lower the benzene vapor concentration. They suggested replacing "change" by "increase."

The Coast Guard agrees and modified § 197.540(d)(1) of the rule accordingly.

24. *Section 197.540(d)(2)*

(a) Two comments objected to the emergency monitoring requirement, after spill cleanup, stating that, especially for liquid benzene-hydrocarbon mixtures, portable equipment operable by vessel personnel does not exist.

The Coast Guard's position is that following benzene cleanup after an emergency, the spill site must be monitored to determine whether it is safe for workers. If necessary, the monitoring devices may have to be analyzed in a laboratory or by contractor using specialized equipment brought to the site.

(b) One comment objected to the use of the term "change personal exposure;" this suggested that even if the emergency reduced personal exposure, the benzene vapor concentration would have to be measured.

The Coast Guard agrees and modified § 197.540(d)(2) accordingly.

(c) One comment asked whether the proposed rule required monitoring equipment on the vessel.

The Coast Guard's position is that tank ships must have equipment on board, along with personnel trained to use and maintain the equipment. Since barges are usually unmanned and normally operate close to shore, the employer can arrange for external assistance and need not have the equipment on board. The Coast Guard modified § 197.540(d)(2) to clarify this.

25. *Section 197.540(e)(1)*

One comment criticized the 30 day period for notifying personnel upon completion of the personnel monitoring as too short, citing the need for more time to review and verify results, and to locate individuals.

The Coast Guard agrees and modified § 197.540(e)(1) to 60 days instead of 30 days.

26. *Section 197.545*

(a) Three comments objected to the provision that would allow labor unions to review the personnel exposure reduction programs. They felt that the plan should only be available to employees and the Coast Guard.

The Coast Guard notes that the proposed rules did not address review of the program by labor unions. Specifically, § 197.545(d) requires notification of personnel that a written program is available for review on request. Personnel interested in providing a copy of the written program to labor unions are not restricted from doing so.

(b) One comment pointed out that since tank barge vents are normally located within 10 feet of tank gauging tubes, personnel gauging tanks may be enveloped by the benzene vapor containing plume. To prevent this, the comments recommended requiring vapor recovery whenever loading liquid benzene.

The Coast Guard disagrees. Vapor recovery systems are one way to reduce exposures; but there are other equally effective methods, such as the use of respirators.

(c) One comment objected to the 60 working days as insufficient for developing a plan to reduce personnel exposures. The comment suggested 120 working days, stating that even 120 working days might be insufficient to evaluate engineering controls.

The Coast Guard disagrees. Sixty working days (12 calendar weeks or three calendar months) is sufficient for drafting a program.

27. *Section 197.545(c)*

One comment said that the requirement to modify the exposure reduction program "whenever the exposure monitoring data changes" was too broad; some changes did not warrant modifying the program.

The Coast Guard modified the wording to require changes in the program, only when monitoring data show increases in benzene vapor concentrations.

28. *Section 197.545(d)*

One comment thought that notifying employees in writing of the existence of an exposure reduction program was unnecessary and a burden. The comment suggested that posting a notification in the workplace would be sufficient.

The Coast Guard believes the comment misinterpreted the proposed rule. Section 197.545(d) does not specify how the required notification must be carried out, only that the corrective action program must be in writing—for example, notification can be carried out by letter or posting a notice.

29. *Section 197.550(a)*

One comment strongly objected to the use of an air-purifying respirator (APR) with such known carcinogens as benzene. It pointed out that NIOSH recommended use of only a full faceplate self-contained breathing apparatus (SCBA) or a supplied air respirator (SAR) operated under positive pressure. The comment stated that even if benzene vapor were not a carcinogen, the use of an APR against benzene vapor would be inappropriate because benzene vapor does not have adequate warning properties.

The Coast Guard's position is that for lower benzene vapor concentrations APR's are effective, and notes that OSHA also allows their use.

30. *Section 197.550(b)(2)*

(a) Four comments objected to the proposed rule's requirement that the employer give employees respirators

free of charge. The comment stated that the Coast Guard should not enter into such labor-management areas.

The Coast Guard disagrees, since it is the responsibility of the employer to protect the employees from the health dangers of benzene vapor.

(b) Another comment suggested changing "free of charge" to "without charge."

The Coast Guard agrees and changed the wording as suggested.

(c) One comment asked whether the employer is responsible for providing respirators to nonemployees.

The Coast Guard's position is that the employer is not required to do so but can if the employer chooses to do so. Neither § 197.530 nor § 197.550 requires the employer to provide clothing or equipment. To make this point clearer, the Coast Guard added a note after § 197.530(a)(4).

(d) Four comments objected to the second sentence of § 197.550(b)(2) which requires an employer to provide special types of respirators to employees who cannot use negative pressure respirators. The comments claimed that this limited employer options and raised compliance costs. Three of these comments said that the employer should have the right to use another employee rather than purchase expensive equipment. The fourth comment suggested the use of "Administrative controls" to prevent exposure.

The Coast Guard agrees. The Coast Guard does not intend to dictate worker assignments. The Coast Guard's interest is to ensure that workers exposed to concentrations of benzene greater than the PEL are equipped with effective respiratory devices. In many instances a facility will transfer benzene infrequently, and so employers may be able to avoid using workers who are unable to use negative pressure respirators. The Coast Guard has modified § 197.550(b)(2) accordingly. The fourth comment does not define the term "Administrative controls."

(e) Finally, one comment asked for clarification on who would make the final determination as to whether an employee could wear a negative pressure respirator. The comment recommended that the company designated medical examiner make this determination.

The Coast Guard accepts this view, recognizing that the medical examiner is in the best position to determine whether an employee can wear a negative pressure respirator. The Coast Guard modified § 197.550(b)(2) in the rule accordingly.

31. *Table 197.550(b)*

Four comments pointed out that the table was derived from OSHA's standard, and that OSHA later clarified the title of the first column to mean the number of multiples of the TWA or STEL rather than ppm. They recommended that the Coast Guard change the Table to reflect OSHA's clarification.

The Coast Guard agrees, and so modified the Table.

32. *Section 197.550(c)(2)*

(a) One comment suggested adding the words "who perform the fitting" after "Persons," for clarity.

The Coast Guard disagrees. Not only must the fitter know how to fit a respirator, but the employee being fitted must know the factors affecting proper fit. Without such information the employee may not realize, for example, that by growing a beard the respirator may no longer fit. Employees being fitted for respirators must undergo training so that they know the factors that ensure a good fit. The Coast Guard modified § 197.550(c)(2) to increase clarity.

(b) Another comment emphasized the need for an unobstructed sealing surface between the faceplate and seal. The crux of the comment was that employees must be clean shaven for an effective seal. They offered a lengthy paragraph describing the factors that can make or prevent a good seal.

The Coast Guard agrees that unobstructed seals are crucial in making effective seals, and added a statement to that effect to this paragraph. Some types of facial hair—moustaches, goatees—may not prevent a good seal. The paragraph suggested in the comment was added to appendix E.

33. *Sections 197.550(c) (2) and (3)*

(a) One comment suggested that since the material in these sections is covered by Appendix E, the material should be deleted.

The Coast Guard structured this part of the rule so that the general requirements are in § 197.550(c) (2) and (3) and the detailed requirements are in appendix E. These general requirements serve as an introduction to appendix E. Without these general requirements, appendix E would be isolated, possibly leading to confusion.

(b) One comment also argued that these sections be deleted, as the information in these sections was also included in § 197.550(d).

The Coast Guard points out that the information provided in these sections is different from the information provided in § 197.550(d). The former is composed of general statements, while § 197.550(d) is restricted to the fit testing process. The Coast Guard revised the wording for clarity. Since appendix E is made mandatory elsewhere, and since the second sentence is not really necessary, paragraph (c)(1) was removed from the final rule. The other two paragraphs are not duplicated elsewhere, and since the requirements are important, they have been retained. Also, paragraphs .550 (c)(2) and (c)(3) were relabeled as paragraphs .550 (d)(1) and (d)(2), and the original paragraph (d) was relabeled as paragraph .550(c). However, to remove possible misunderstanding as to who "persons" refers to in both paragraphs. the Coast Guard has changed the word to "employees."

(c) The same comment also stated that many companies have a "no beard" policy, a policy that was not addressed in the proposed rule.

The Coast Guard. rather than ban all beards whether or not they obstruct the seal, determined that a performance oriented approach was superior. The rule only prohibits facial hair that obstructs the seal. The employer must also ensure that if the employee grows a beard (or undergoes any other change that might prevent a good seal), the employee must be fit tested again to determine whether the respirator seal is still effective.

34. *Section 197.550(c)(3)*

Five comments objected to the prohibition to the use of contact lenses when wearing respirators. They cited a recent OSHA guideline containing the statement that use of soft lenses or gas permeable hard lenses would be a de minimis violation, pending revision of the regulations. One comment also pointed out that in case of emergency it could be difficult for some contact lens wearers to switch to spectacles, particularly aligning spectacle inserts.

The Coast Guard agrees, and modified the last sentence of the paragraph to allow soft lenses and gas permeable hard lenses. Note that, as discussed above, the paragraph was relabeled as .550(d)(2).

35. *Sections 197.550(d) (2) and (3).*

One comment suggested deleting these two sections as they seem to be advisory in nature.

The Coast Guard disagrees, noting that the two paragraphs are mandatory and contain general requirements for respirator selection and fit test certification.

36. *Section 197.550(g)(3)*

One comment suggested that to avoid confusion between the 8 hour requirement and the "end of useful life" indicator, the words "even if this exceeds eight hours" be added to the end of the paragraph.

The Coast Guard agrees, and modified the rule. In addition, the Coast Guard has added that the element must be replaced at the start of the shift, so that the worker can be assured of a fresh, effective element at the start of a shift.

37. *Section 197.555*

One comment pointed out that protective clothing was very important in preventing absorption of benzene through the skin and recommended the regulations contain specific requirements addressing permeation, penetration, and degradation of material used in the clothing.

The Coast Guard agrees as to the importance of protective clothing, but believes this requirement is best incorporated in a performance-based approach. In addition, the Coast Guard does not have enough information to establish specifications for clothing.

38. *Sections 197.555 (b) and (c)*

(a) Three comments criticized the requirement for the employer to provide personal protective clothing and equipment free of charge. The comments suggested the Coast Guard only require the employer to ensure that the employee has the proper clothing and equipment and that the employee wear or use the clothing.

The Coast Guard disagrees and maintains that it is the employer's responsibility to provide protective clothing and equipment as well as to maintain it. This clothing and equipment is worn on the outside of an employee's clothing and is generally worn only in areas of benzene operations. When the employee completes the operation, the clothing is normally removed; contaminated clothing must undergo special cleaning, not within the capabilities of the employee.

39. *Section 197.555(c)*

Two comments proposed adding the words "as necsssary" after "eye goggles" to clarify that use of all the listed clothing might not be necessary.

The Coast Guard disagrees; the three clothing items are always needed and are not optional.

40. *Section 197.560*

(a) One comment suggested that the required periodic medical tests be scheduled to coincide with Coast Guard license exam requirements.

The Coast Guard agrees with this concept that it is cost effective to schedule all required medical and license exams at the same time; however, this may not always be practical.

(b) One comment asked whether the employer had only to offer the medical exam, or whether the employee had to take the exam.

The Coast Guard's intent is that the employee must take the exam. Benzene overexposures can often be detected by certain medical tests and this is an important part of an employee's protection. To make this requirement clearer, the Coast Guard revised § 197.560(a)(1) with new wording.

(c) Another comment noted that OSHA is considering adopting a generic standard for medical surveillance, and suggested the Coast Guard participate in developing OSHA's standard and adopt it by reference.

The Coast Guard is monitoring OSHA's efforts in this area and will consider whether to adopt it once the standard is promulgated.

41. *Section 197.560(a)(1)*

One comment proposed adding to the end of this paragraph a statement that, rather than the employer being responsible for compliance by the physician, the employer must make reasonable efforts to ensure the physician is in compliance with these requirements.

The Coast Guard disagrees. If the physician fails to comply with these requirements, the employer is not discharged of responsibility for compliance with these medical requirements. If necessary, the employer should hire another physician to fulfill the medical requirements.

42. *Section 197.560(a)(4)*

Two comments pointed out that the American Industrial Hygiene Association does not accredit medical labs. One comment suggested using the American Medical Association instead.

The Coast Guard agrees and modified the rule.

43. *Section 197.560(b)*

(a) Five comments questioned the meaning of this paragraph. All said that their interpretation was that the period for physical exams would begin within sixty days of the implementation of the rule, but that all physical exams would not have to be completed within that period. One of these comments pointed out that the required exposure monitoring will determine which employees need medical examinations, so that the time period specified in this paragraph should begin after exposure monitoring is complete. This comment recommended the Coast Guard allow six months to complete all exams and to notify all personnel.

The Coast Guard agrees. Since exposure monitoring would require considerable time, and the results would have to be known before medical exams could be scheduled, the sixty day limit was changed to apply only to those employees previously exposed to benzene as stated in § 197.560(b)(2)(i). Note that § 197.560(b) was revised to permit three months for medical exams for those employees not previously exposed to benzene. For other employees, all tests and notifications of test results must be completed within six months. To clarify these points, the Coast Guard has revised § 197.560(b)(1) with new wording.

(b) Another comment asked for the parameters of the medical examination. It also advocated restricting the reporting of the test results to medical problems related to benzene vapor exposure only.

The Coast Guard listed the medical exam requirements in § 197.560(b)(5); the required tests are limited to benzene related issues. The rule's intent is to test and report only benzene related abnormalities. However, the employer is not prevented from offering or requiring other tests—these are the proper subject for traditional management labor negotiations. The Coast Guard agrees with the comment's point about restricting the reporting of test results, based on the privacy issues involved. Section 197.560(g)(3) of the proposed rule prohibits the physician from including in the written opinion required by § 197.560(g)(1) anything that has "no bearing on the employee's ability to work in a benzene-exposed workplace" or the ability to use protective clothing or equipment or respirators.

44. *Section 197.560(b)(2)(i)*

One comment suggested clarifying the 10 ppm limit by adding the words "as an 8 hour TWA" to the 10 ppm requirement. Without this change, the 10 ppm is essentially undefined, as the 10 ppm could be a peak value reached once a day or an average value of some type.

The Coast Guard agrees and clarified the rule accordingly.

45. *Section 197.560(b)(2)(ii)*

One comment cited the difficulty in predicting which employees will be exposed to benzene in the coming year. The comment argued that the wording "who will be or may be exposed" was not precise. The comment suggested the

wording "may reasonably be expected to be exposed to benzene."

The Coast Guard accepts this wording and modified the rule accordingly.

46. *Section 197.560(b)(5)(i)*

One comment expressed the difficulty of establishing an occupational history. The comment suggested adding the words "a detailed review of the occupational history provided by the employee" in place of the words "occupational history" to clarify who has the responsibility for the accuracy and completeness of the work history.

The Coast Guard agrees. Some of the information requested by the employer can only be provided by the employee. The rule was modified to reflect this change.

47. *Section 197.560(c)(1)*

(a) One comment interpreted this paragraph as requiring annual medical exams for each employee who has continued to be employed by the company, whether or not the employee was exposed above the level triggering the initial medical exam, and even if the employee is no longer exposed to benzene. The comment recommended wording to relieve employers of the necessity of testing such individuals.

The Coast Guard agrees with this point, and modified the rule to this effect.

(b) Another comment held the position that the person in charge of the vessel should not be responsible for the medical monitoring of union personnel, since workers may go from company to company and ship to ship. The comment did not propose who should be responsible.

The Coast Guard notes that § 197.560(c)(1) makes the employer responsible for making periodic medical exams available to affected employees rather than making the person in charge responsible for the exams. While it is true that some employees will move from company to company, the current employer remains responsible for the employee's health.

48. *Section 197.560(c)(3)*

One comment felt that annual spirometry and heart studies performed every three years was excessive. The practice of the company making the comment was to conduct a spirometry test every third year and not to conduct heart studies.

The Coast Guard determined that the proposed requirements were necessary to protect workers. The medical tests specified in this paragraph are the same as those required by OSHA.

49. *Section 197.560(d)(1)*

One comment objected to a second confirmatory blood count within two weeks, arguing that the industry could not always meet such short timeframes. The comment requested a four to six week requirement.

The Coast Guard is increasing the time allowed for repeat blood tests to four weeks.

50. *Section 197.560(e)*

(a) One comment contended that the urinary phenol test is inexact and nonspecific because grapes, bananas and some over the counter medications produce high phenol concentrations. The comment suggested the examining physician obtain an accurate dietary and medication history at the time of taking the sample.

The Coast Guard agrees and modified § 197.560(e)(1) to ensure that the employee provide a dietary and medication history.

(b) One comment proposed that the required urinary phenol test need not be performed within 72 hours after the end of the employees shift. The urine sample should be preferably taken within 8 hours of any emergency exposure, and, while the sample should be analyzed within 72 hours, it can be frozen for analysis at a later time.

The Coast Guard agrees that the sample can be frozen if analysis is not possible within 72 hours, and modified § 197.560(e)(1).

(c) Six comments argued that the urinary phenol test would be difficult or impossible to conduct if the emergency exposure occurred at sea or in a foreign port. The comments suggested adding the words "if feasible" after "emergency," to provide flexibility. One comment wanted the U.S. Government to provide a listing of accredited laboratories in foreign countries.

The Coast Guard's position is that a phenol test is critical. If testing services are not available, the sample can be frozen and tested at a later time. The proposal that the U.S. Government provide a listing of accredited foreign laboratories is not practical.

51. *Sections 197.560(f) (3) and (4)*

One comment reported that at least one company does not send this information (description of worker exposure, respirator, and personnel protective clothing and equipment) to the physicians, as required by this section. The comment added that it is questionable whether physicians will refer to the information.

The Coast Guard's position is that the physician may need to know this information to conduct a thorough examination.

52. *Section 197.560(f)(5)*

One comment objected to the requirement in paragraph (5) that employers provide the examining physician all previous employment-related medical examinations. The Comment stated that this is possible only for those records related to the period the employee worked for the employer, and not when the employee worked for others.

The Coast Guard agrees and changed the rule accordingly by rewriting § 197.560(f)(5).

53. *Section 197.560(g)(1)*

One comment objected to the requirement for providing the employee with the physician's written opinion within 15 days. Based on ship assignments and reliability of mail service, the comment recommended 45 days.

The Coast Guard agrees, and modified § 197.560(g)(1) accordingly.

54. *Section 197.560(g)(2)*

(a) One comment expressed concern that a physician might release information to the employer which is unrelated to benzene exposure.

The Coast Guard is balancing the need to protect the employee's health with protecting the employee's privacy by limiting employer access only to a physician's written opinion, which can contain only medical information relating to benzene exposure. The employer must have such access so the employee's work pattern can be adjusted (or the employee removed from a benzene environment) to protect the employee's health. Paragraph (3) specifically precludes the written opinion from containing information that has no bearing on the employee's ability to work in a benzene-exposed workplace.

(b) This comment also urged the Coast Guard require the physician, on the employee's written or oral request, to give the results directly to the employee, rather than the employer.

The Coast Guard's position is that the employer must know whether overexposures are occurring, as indicated by the medical tests, so that the benzene exposure program can be modified to reduce exposures to a safe level. To clarify the issue, paragraph .560(g)(1) was modified to require the physician to notify the employer as well as the employee.

55. *Section 197.560(g)(2)(ii)*

One comment suggested adding the words "of health" after "material impairment."

The Coast Guard adopted the suggested addition.

56. *Section 197.560(g)(3)*

(a) One comment contended that the ability to use respirators or other personal protective equipment were important and that the physician must report any health problem impairing that ability.

The Coast Guard rewrote this paragraph consistent with the comment.

(b) Three comments urged the Coast Guard to require the written physician's opinion to include any serious conditions that affect the employee's fitness for duty. One specifically mentioned evidence of alcohol and drug abuse.

The Coast Guard's intent in this rulemaking is to protect marine workers from harmful benzene exposure. There are other regulatory efforts by the Coast Guard and other Federal, state, and local agencies which address these other health issues.

57. *Section 197.565(a)*

(a) One comment felt that since liquid benzene was, in some instances, only a small percentage of a cargo, the material safety data sheet (MSDS) requirement should be for an MSDS for that cargo and not for pure benzene.

The Coast Guard agrees that for some cargoes the amount of liquid benzene is relatively small and that such cargoes could present other hazards unrelated to benzene. However, the intent of this requirement is to alert workers to the dangers of benzene, which are different from and pose a greater health risk than most other chemicals. The required benzene MSDS is in addition to any other required MSDS.

(b) This comment also questioned the use of a Coast Guard MSDS (appendix A) arguing that the manufacturer knows the cargo and its hazards best, and that a generic MSDS could be inaccurate in some areas.

The Coast Guard included a sample benzene MSDS to reduce the burden on the employer. Since the sample MSDS is for a pure substance, the MSDS's should not vary significantly. However, companies can use their own data sheets as long as they contain the required information.

(c) Another comment proposed requiring submission of an MSDS to the person in charge prior to cargo loading, with the MSDS to include a notification on its face that 46 CFR 197, subpart C applies.

The Coast Guard notes that the employer must make available to the person in charge a benzene MSDS since the person in charge is involved in the benzene operation. The Coast Guard concluded that it is not necessary to require such a notification.

58. *Section 197.565(b)*

(a) Three comments urged that the phrase "work area" be replaced with "vessel or vessels" to prevent the employer from having to train workers every time the worker moves to a different vessel.

The Coast Guard intended that only those workers whose jobs require entry into a benzene area aboard a vessel need be trained. The Coast Guard also intended that training be required even when the worker is transferred to a new vessel. Equipment and operations will likely differ from vessel to vessel, but when they are substantially similar, only a brief training session should be needed.

(b) One comment interpreted the requirement as allowing training on land or at sea through videotapes, courses, and other means.

The Coast Guard agrees with this interpretation.

59. *Section 197.570(a)(1)*

(a) One comment pointed out that the three year medical record retention requirement was in conflict with other record retention requirements.

The Coast Guard's position is that retaining medical records for three years is sufficient to determine whether the benzene reduction program is working properly. Employers, however, may elect to retain the records for a longer period.

60. *Section 197.570(c)*

(a) Three comments advised that under the Privacy Act medical records could not be made available without the individual's permission. For this reason, the Coast Guard should not have the right to examine or copy these records. Specifically, these comments proposed wording removing the requirement that the medical records be made available to the Coast Guard, allowing the Coast Guard access only to personal exposure monitoring records.

The Coast Guard respects the privacy of the individual, especially the privacy of medical records. But since these records are only required to contain information relating to the health effects of benzene exposures, the Coast Guard's position is that the benefits of checking compliance with the regulations outweigh the intrusion into an individual's privacy. Without access to these medical records, the Coast Guard will not be able to enforce regulations designed to protect these individuals.

(b) A similar comment noted that there might be a conflict between the Coast Guard's interest in protecting workers from the health effects of benzene and its responsibility in licensing and documenting many marines employees. The comment suggested that if the purpose was the collection of data, then the Coast Guard should use the data collected by OSHA.

The Coast Guard maintains that the only purpose for examining health information is to ensure that these regulations are being followed. Since these records are not required to contain information other than that pertaining to the health effects of benzene exposure, there should not be any impact on licensing or documentation.

(c) Another comment argued that personal exposure monitoring data collected in accordance with § 197.570(a) should be kept confidential and be released only to the employee, employee's physician, or employee's designated representative, and not be released to those involved in benzene operations. Furthermore, the comment contends that making the records available would be burdensome.

The Coast Guard does not agree that exposure monitoring data should be considered a matter of privacy. Since the data from one person in an operation are expected to be applicable to others doing the same job, the employer must make the data available to all employees involved in benzene operations. Without this information employees who are not monitored will be unable to determine whether they are being exposed to unsafe benzene exposures.

(d) Finally, another comment proposed that copies of items entered into employee medical records be made available to the employee, employee's physician, or the employee's representative, if the employee so requests in writing.

The Coast Guard notes that this is provided for in § 197.570(c)(4) of the rule.

61. *Section 197.570(d)*

One comment pointed out that the employer could terminate a portion of the business and no longer deal with benzene or benzene containing cargoes, but still be a functioning business entity. It appears the proposed rule would require the employer to transfer the records to the employee. The comment contends this would be an unnecessary burden.

The Coast Guard's intent was that the employer would transfer the records to the employee when the company went out of business. To prevent any confusion, the Coast Guard modified § 197.570(d).

62. *Section 197.570(e)*

One comment cited the need for confidentiality and proposed language to explicitly require it, including placing all records in a separate filing system.

The Coast Guard agrees with the need for confidentiality, especially with medical records. The Coast Guard will adopt a new paragraph, § 197.570(e), similar to that offered, but will not require keeping the medical records in a separate filing system—with the advent of computerized record keeping with effective security controls, a separate filing system is unnecessary.

63. *Section 197.575(a)*

(a) Six comments strongly objected to the provision requiring the employer to allow the representatives of those involved in benzene operations to observe all monitoring required in accordance with § 197.540(b). The comments argued this was a matter best left for labor management negotiations and that unlike employees and Coast Guard personnel, these representatives could disrupt operations, would present safety hazards to themselves and others, and would present insurance problems. One comment added that observers must be considered nonemployees and be covered by § 197.530.

The Coast Guard's position is that access during monitoring for employee representatives will provide additional protection for workers. Monitoring is complicated but must be done correctly to accurately determine exposures. In some cases, the employee may wish to have a representative present who is trained in this specialty to observe the process. The Coast Guard recognizes that this may create some problems for the person in charge; however, with instruction to these personnel, problems will be minimized. The Coast Guard agrees representatives are nonemployees and subject to § 197.530.

(b) Another comment proposed that any observers monitoring the tests be responsible for their own fit testing and medical surveillance and provide their own equipment.

The Coast Guard agrees.

64. *Section 197.580*

(a) One comment objected to the Coast Guard supplying data sheets and technical, medical, and sampling information in the Appendices. These should be generated by suppliers, professionals, and organizations.

The Coast Guard notes that appendix E is mandatory and contains critical requirements for respirator fit tests. The remaining Appendices were included as nonmandatory aids that are directed primarily at smaller companies which may have difficulty compiling these data. Employers can use information from other sources if they prefer.

65. *Section 197.580, Appendix D*

One comment suggested the Coast Guard allow the use of other analytic methods comparable to the NIOSH and OSHA methods specified in appendix D.

The Coast Guard notes that appendix D is advisory. NIOSH's and OSHA's methods are not required. The Coast Guard will accept other methods that are equally effective.

66. *Section 197.580, Appendix E*

(a) One comment advocated deleting specific requirements for fit testing and instead suggested referencing the ANSI Z88 standards. This would keep the standard up to date and avoid problems with different standards for different chemicals.

The Coast Guard will consider adopting ANSI Z88 by reference when the next edition of ANSI Z88 is finalized.

(b) Another comment recommended requiring the employer provide the employee with the choice of at least two manufacturer's models and three faceplate sizes for each type of respirator that is fit tested. This would increase chances that the respirator would be effective and comfortable to the wearer. The comment cited OSHA's benzene standard that requires a choice of two manufacturers.

The Coast Guard notes that the initial fit test of appendix E specifies three sizes of faceplates for each type of respirator. However, the Coast Guard believes that an employer could in many cases effectively standardize its respirator inventory on a single manufacturer's model. For those cases where a single model is not effective for all employees, additional models will have to be tried.

(c) One comment noted that the irritant fume test specified the use of a stannic oxychloride tube. The comment asked if this is a mistake, citing the tube's warning against exposure to heavy concentrations of fumes and contact with skin and eyes. The comment suggested that the Coast Guard include a warning in appendix E similar to the warning on the stannic oxychloride tube. Alternately, the Coast Guard should offer alternatives to the use of stannic oxychloride.

The Coast Guard notes that while appendix E is mandatory, the irritant fume test is not mandatory, but rather is an alternative qualitative fit test. Appendix E does not contain a stannic oxychloride warning since the Appendix was derived from OSHA's benzene standard, which did not contain a warning. The Coast Guard will accept alternatives to this tube providing that the alternative is at least equally effective.

(d) Another comment recommended the Coast Guard consider the use of the TSI Portacount Quantitative Fit Test device. The device has several advantages, but was developed after OSHA's protocol was finalized.

The Coast Guard accepts alternative methods providing they are at least as effective as those required by appendix E.

(e) Finally, one comment proposed deleting the requirement for three fit tests as this requirement is no longer a standard practice and is not reflected in the new ANSI Respirator Standard Z88.2–1990.

The Coast Guard notes that when this standard is published, the Coast Guard will review the published ANSI standard to determine whether changes to the benzene regulations are warranted.

Incorporation by Reference

The Director of the Federal Register approved the material in § 197.550 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 but is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). A Final Regulatory Evaluation is available in the docket for inspection or copying.

The regulatory evaluation prepared for this rulemaking examined the costs and benefits that would be expected upon implementation of these regulations. Two methods of compliance with the regulations were considered, respiratory protection and vapor control.

In determining the costs of respiratory protection, it was assumed that most operations involving the shipment of benzene and benzene containing cargoes would require the use of respirators. Based on the quantity (approximately 275 million short tons) of benzene and benzene containing mixtures shipped each year by tank barge and tankship, approximately

68,000 separate loads (57,000 barge and 11,000 tankship) would be carried each year. The average cost of respiratory protection per cargo loaded is approximately $16. In addition, if respiratory protection is chosen as the method of compliance, other costs would be incurred for exposure monitoring and medical surveillance. These costs would amount to approximately $51 per cargo loaded, which gives a total cost per load shipped of $73. Therefore, the total industry cost for respiratory protection during the first year would be approximately $5.0 million. For subsequent years, the total yearly costs would decrease slightly because certain items, such as respirators and other non-expendable items, do not have to be purchased each year.

The total industry costs for using vapor control methods to comply with these regulations could not be determined. The number of terminals and barges that carry benzene containing cargoes and that would be converted is not known. Conversion costs have been estimated to be about $250,000 per barge and 1–2 million dollars per terminal.

The use of vapor control equipment, which is the preferred method because it eliminates benzene vapor exposures entirely, will probably not be chosen by most small companies because of the high initial installation cost. It is expected that many large companies will choose this method of compliance because it will eliminate the benzene vapor exposure problem and also will allow the companies to comply with air pollution standards imposed both locally and on a national level.

The benefit expected due to implementation of these regulations is the saving of 225 lives from leukemia and 98 lives from the other benzene induced diseases for a total of 323 lives over a 45 year working lifetime. Approximately 19,500 marine workers are exposed to benzene.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This final rule establishes a performance standard which allows the employer to select the methods for complying with the standard. Compliance can be met, in some instances, by simply revising work practices. In those situations, the costs would be quite low ($1,000 per year for training and for revision of operations manuals). Another alternative is respiratory protection. Costs for this option would be approximately $2,700 per employee per year. By being able to select the methods of compliance, the small business can keep the costs of compliance low by choosing one of these lower cost methods and, thereby, minimize the economic impact.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains a collection of information requirements. The Coast Guard submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB approved them. The section numbers are § 197.540, Determination of personal exposure; § 197.560, Medical surveillance; § 197.565, Notifying employees of benzene hazards; and § 197.570, Recordkeeping, and the corresponding OMB approval number is 2115–0586.

Federalism

The Coast Guard analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of the final rule and concluded that preparation of an environmental impact statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available in the docket for inspection or copying where indicated under "**ADDRESSES**."

This rulemaking is intended to protect workers from exposure to hazardous levels of benzene vapor and would not increase the level of benzene vapor released into the atmosphere. In fact, by providing an incentive to install vapor control or recovery systems (thereby relieving employers of the need to furnish and fit test employees with respirators and other protective equipment), the amount of benzene vapor released into the atmosphere would decrease.

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 153

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 197

Diving, Incorporation by reference, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 30, 151, 153, and 197 as follows:

PART 30—GENERAL PROVISIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507.

§ 30.25–1 [Amended]

2. In § 30.25–1, Table 30.25–1 is amended by adding a dagger (†) in front of the following entries: "Coal tar", "Gas oil, cracked", "Gasoline blending stocks: Reformates", "Gasolines: Automotive (containing not over 4.23 grams lead per gallon)", "Gasolines: Aviation (containing not over 4.86 grams lead per gallon)", "Gasolines: Straight run", "Jet fuels: JP–4", "Naphtha: Cracking fraction", "Naphtha: Petroleum", "Naphtha: Solvent", "Naphtha: Stoddard Solvent", "Naphtha: Varnish makers' and painters' (75%)", "Oil, misc: Crude", "Turpentine substitute (White spirit)", "White spirit", and "White spirit, Low Aromatic" and by adding a footnote following the table to read: "(†)—The provisions contained in 46 CFR part 197, subpart C, may apply to this cargo".

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

3. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

§ 151.05-1 [Amended]

4. In § 151.05–1, Table 151.05 is amended in the name column under cargo identification by replacing "10%" by "0.5%" in the entries "Benzene hydrocarbon mixtures (containing acetylenes) (having 10% benzene or more)", "Benzene hydrocarbon mixtures (having 10% benzene or more)", and "Benzene, toluene, xylene mixtures (having 10% benzene or more)", by removing the word "Open" in the "Gauging device" column for "Benzene" and adding, in its place, the word "Restr."; by adding "151.50–60" in the "Special requirements (Section)" column for "Benzene-hydrocarbon mixtures (containing acetylenes) (having 0.5% benzene or more)"; and by removing the word "No" from the "Special requirements (Section)" column for "Benzene hydrocarbon mixtures (having 0.5% benzene or more)" and for "Benzene, toluene, xylene mixtures (having 0.5% benzene or more)" and adding, in its place, "151.50–60".

5. Section 151.50–60 is revised to read as follows:

§ 151.50–60 Benzene.

The person in charge of a Coast Guard inspected barge shall ensure that the provisions of part 197, subpart C, of this chapter are applied when cargoes containing 0.5% or more benzene by volume are carried.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

6. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 U.S.C App. 1804; 33 U.S.C 1903; 49 CFR 1.46.

7. Section 153.1060 is revised to read as follows:

§ 153.1060 Benzene.

The master of a vessel shall ensure that the provisions of part 197, subpart C, of this chapter are applied when cargoes containing 0.5% or more benzene by volume are carried.

PART 153—[AMENDED]

8. Table 1 to part 153 is amended in the cargo name column by replacing "10%" by "0.5%" in the entry "Benzene hydrocarbon mixtures (having 10% Benzene or more)", by adding in the "Special requirements" column for "Benzene hydrocarbon mixtures (having 0.5% Benzene or more)" the number ".933" in numerical order, and by adding in the "Special requirements" column for "Coal tar", "Coal tar naphtha solvent", and "Coal tar pitch (molten)" the numbers ".933" and ".1060" in numerical order.

PART 197—GENERAL PROVISIONS

9. The authority citation for part 197 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 6101; 49 CFR 1.46.

10. Part 197 is amended by adding a new subpart C (consisting of §§ 197.501–197.580 and Appendices A–F).

Subpart C—Benzene

Sec.

Subpart C—Benzene

§ 197.501 Applicability.

(a) Except for vessels satisfying paragraph (b) of this section, this subpart applies to all Coast Guard inspected vessels, including tank ships and barges, that are carrying benzene or benzene containing liquids in bulk as cargo.

(b) This subpart does not apply to vessels that are carrying only liquid cargoes containing less than 0.5% benzene by volume.

§ 197.505 Definitions.

As used in this subpart—

Action level means an airborne concentration of benzene of 0.5 parts of benzene per million parts of air calculated as an eight hour time-weighted average, generated from vessels regulated by this Subpart.

Authorized person means a person specifically authorized by the person in charge of the vessel to enter a regulated area.

Benzene means liquefied or gaseous benzene (C_6H_6; Chemical Abstracts Service Registry No. 71–43–2) and includes benzene contained in liquid mixtures and the benzene vapors released by these mixtures. The term does not include trace amounts of unreacted benzene contained in solid materials.

Breathing zone means the area within one foot of a person's mouth and nose.

Employee means an individual who is on board a vessel by reason of that individual's employment and who is employed directly by the owner, charterer, managing operator, or agent of that vessel.

Employer means the owner, charterer, managing operator, or agent of a vessel.

Emergency means an occurrence, such as an equipment failure, a container rupture, or a control equipment failure, which results or may result in an unexpected release of benzene.

Operations involving benzene means any operation that could subject a worker to benzene exposures above the PEL, including cargo transfer operations involving connecting or disconnecting liquid or vapor hoses; cargo tank gauging and sampling; and cargo tank gas freeing, venting, and cleaning.

Performance standard means the standard in § 197.520.

Person in charge means—

(1) For a self propelled vessel, the master or licensed operator of the vessel; and

(2) For an unmanned barge,

(i) The licensed operator of the vessel for barge tows;

(ii) Where there is no licensed operator, the tankerman who signs the declaration of inspection for a cargo transfer for an operation involving benzene; or

(iii) Where there is no licensed operator or tankerman, the individual in charge of the vessel when it is moored at a fleet, terminal, or other place.

Permissible exposure limits or *PELs* mean the exposure limits specified in § 197.515.

Personal exposure means the concentration of airborne benzene to which a person would be exposed if that person were not using a properly fitted

respirator in compliance with § 197.550 and the personal protective clothing and equipment in compliance with § 197.555.

Regulated area means an area designated in compliance with § 197.535.

Short-term exposure limit or *STEL* means an airborne concentration of five parts of benzene per million parts of air (five ppm), as averaged over any 15 minute period.

Time-weighted average exposure limit or *TWA* means an airborne concentration of one part of benzene per million parts of air (one ppm), as averaged over an eight-hour period. This eight hour period covers the time, up to eight hours, that the employee works in any 24 hour period. If the exposure period is less than eight hours within the 24 hour period, the difference between eight hours and the time of exposure (that is, the unexposed time) is averaged into the TWA. If the exposure period exceeds eight hours in any 24 hour period, sum the products of each exposure level multiplied by the time at that exposure level. The TWA is the value of that sum divided by eight hours.

Vapor control or recovery system means a system of piping and equipment used to collect vapors by transporting the vapors from a tank being loaded to a tank being unloaded or by collecting the vapors and containing them, recovering them, dispersing them in a location remote from personnel, or destroying them.

§ 197.510 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the **Federal Register** in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC and at U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street, SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this subpart and the sections affected are as follows: American National Standards Institute (ANSI), 1430 Broadway, New York. NY 10018, ANSI Z 88.2—1980—Practices for Respiratory Protection ..... § 197.550.

§ 197.515 Permissible exposure limits (PELs).

The permissible exposure limits (PELs) for personal exposure are as follows:

(a) The time-weighted average exposure limit (TWA).

(b) The short-term exposure limit (STEL). Exposures at the STEL must not be repeated more than four times a day. There must be at least 60 minutes between successive exposures at the STEL.

§ 197.520 Performance standard.

No person may be subjected to a personal exposure in excess of the permissible exposure limits unless respiratory protection is used.

§ 197.525 Responsibility of the person in charge.

Unless otherwise specified, the person in charge shall ensure that the performance standard and other requirements of this subpart are complied with on that person's vessel.

§ 197.530 Persons other than employees.

(a) Before a nonemployee (other than Federal, state, and local government personnel) engages in a benzene operation on a vessel in which the person is likely to be exposed to benzene in excess of the PELs, that person must certify that—

(1) That person has had, within the previous 12 months, at least one medical examination in compliance with § 197.560 or 29 CFR 1910.1028;

(2) The physician who performed or who supervised the latest medical examination in compliance with paragraph (a)(1) of this section did not recommend that that person be excluded from areas where personal exposure may exceed the action level;

(3) All respirators and personal protective clothing and equipment that will be used by that person while on the vessel meet the requirements of § 197.550(b) and § 197.555(c) or of 29 CFR 1910.1028; and

(4) All respirators that will be used by that person while on the vessel have been fitted and fit tested in accordance with § 197.550 (c) and (d) or with 29 CFR 1910.1028.

Note: The employer need not furnish the required respirators and personal protective clothing and equipment to nonemployees.

(b) The certification required by paragraph (a) of this section must be in writing, list the items in paragraphs (a)(1) through (a)(4) of this section, reference 46 CFR 197.530, state the date of the certification, and be signed by the person making the certification. A sample certification form is contained in appendix F of this subpart.

(c) Before the nonemployee making the certification engages in a benzene operation on a vessel, that person or a representative of the entity which employs that person must show a copy of the certification to the person in charge of the vessel and the person in charge must examine the certification to ensure compliance with the requirements of this section.

§ 197.535 Regulated areas.

(a) Based on the employer's evaluation of the environmental monitoring, whenever the airborne concentration of benzene within an area exceeds or reasonably can be expected to exceed the permissible exposure limits, the person in charge shall mark the area as a regulated area.

(b) The person in charge shall restrict access to regulated areas to authorized persons wearing an appropriate respirator in compliance with § 197.550 and the personal protective clothing and equipment in compliance with § 197.555. The person in charge shall not allow any person to enter a regulated area without another individual in the vicinity to perform rescue or call for help. The second individual must maintain communication with the one entering the regulated area or keep that individual in sight. Also, the second individual must be located at the point of access during confined space entry.

(c) The boundaries of regulated areas must be indicated by barricades, other devices, or by painted areas on the vessel. A sign bearing the following legend in letters at least three inches high (except for the words "DANGER—BENZENE", which must be printed in letters at least 50 percent larger than the other words) must be posted at each access to the regulated areas:

DANGER—BENZENE

REGULATED AREA

CANCER CAUSING AGENT

FLAMMABLE—NO SMOKING

AUTHORIZED PERSONNEL ONLY

RESPIRATOR REQUIRED

§ 197.540 Determination of personal exposure.

(a) *General.* (1) The employer shall ensure that one or more persons in each type of operation conducted on the vessel which involves the handling of or potential exposure to benzene are monitored. The monitoring must be conducted so as to determine the representative personal exposure of all persons engaged in each particular

operation involving benzene. Monitoring one vessel of a class is sufficient for all vessels of that class provided the procedures, equipment, work practices, cargo, and control equipment are substantially the same.

(2) For long duration operations, such as cargo loading or tank entry, the persons monitored must be monitored to determine the representative TWA for all persons engaged in the operation. The monitoring must be based on breathing zone air samples taken for the duration of the operation or for eight hours, whichever is less.

(3) For short duration operations, such as tank gauging or hose connection and disconnection, the persons monitored must be monitored to determine the representative short term exposure level for all persons engaged in the operation. The monitoring must be based on 15 minute breathing zone air samples. Brief period measuring devices may be used to determine whether monitoring for the short term exposure level is needed.

(4) If cargoes with different benzene concentrations are being carried on the vessel, an operation involving the lower concentration cargoes need not be monitored if the same type of operation involving the highest concentration cargo is monitored and found to be below the action level.

(5) Initial monitoring must be conducted during weather conditions typical in the geographic area and during the time of day the operation is normally conducted. If the benzene level is above half the action level for the operation, additional monitoring must be conducted under those weather conditions that will maximize benzene exposure, such as low wind, stable air, and high temperature.

(6) The monitoring method used must be accurate to a confidence level of 95 percent to within plus or minus 25 percent for airborne concentrations of benzene equal to or greater than 0.5 ppm.

(b) *Initial exposure monitoring.* Before January 15, 1992 or when benzene is first loaded as cargo on board the vessel an initial monitoring of each type of operation must be conducted to determine accurately the representative personal exposure of persons involved in the operation. If an initial monitoring of the operation has been conducted since September 1987 and the monitoring procedure used met or exceeded the requirements of this section, that monitoring satisfies the requirements of this paragraph.

(c) *Periodic exposure monitoring.* The monitoring must be repeated each July or August if benzene containing cargoes are carried during those months; monitoring must be conducted under those weather conditions that will maximize benzene exposure, such as low wind, stable air, and high temperature. If benzene containing cargoes are not carried during those months, monitoring must be conducted at the time of carriage nearest those months; monitoring must be conducted under those weather conditions that will maximize benzene exposure, such as low wind, stable air, and high temperature.

(d) *Additional exposure monitoring.* (1) Monitoring in compliance with paragraphs (b) and (c) of this section must be repeated for the operation when there has been a change in the procedure, equipment, or work practices of the operation which may increase personal exposure or whenever the employer or person in charge has any reason to suspect that personal exposure has increased.

(2) Whenever emergencies occur that may increase personal exposure, operations affected by the emergency must be monitored using area or personal sampling after the spill is cleaned up or the leak, rupture, or other breakdown is repaired to determine when personal exposure has returned to the level that existed before the emergency. There must be monitoring equipment aboard each ship.

(3) For those cases in which the benzene exposure can vary significantly over the year, the personnel exposure reduction plan can reflect this variation in time if both initial and periodic exposure monitoring are conducted at those times. There must be sufficient monitoring to quantitatively justify differences in the exposure reduction program over the course of the year. The exposure monitoring must be conducted under those weather conditions that will maximize benzene exposure, such as low wind, stable air, and high temperature.

(4) The Coast Guard may require additional monitoring upon reasonable belief that the PEL's are being exceeded.

(e) *Notification of exposure monitoring results.* (1) Within 60 working days after the receipt of the results of monitoring in compliance with this section, each person involved in the operation monitored must be given written notice of the results, either by separate letter or by notice posted in a location accessible to all persons involved.

(2) If the results indicate that the PELs were exceeded, the written notice required by paragraph (e)(1) of this section must state, or refer to a document available to the persons involved which states, the corrective action to be taken to reduce the personal exposure to or below the PELs.

§ 197.545 Program to reduce personal exposure.

(a) When personal exposure for an operation is over the applicable PEL as determined in compliance with § 197.540, the employer shall develop and implement, within 60 working days of the date of that determination, a written program detailing the corrective actions that will be taken to reduce personal exposure to or below the PEL's. The written program must include a timeframe for implementing the corrective actions to be taken.

(b) Corrective actions in compliance with paragraph (a) of this section may include, but are not limited to, one or more of the following:

(1) Engineering controls (e.g. vapor control or recovery systems, closed loading systems, or controlled venting systems);

(2) Revised work practices; or

(3) Respirators in compliance with § 197.550 and personal protective clothing and equipment in compliance with § 197.555.

(c) Whenever the exposure monitoring data show a significant increase in personnel exposure, the program must be revised to reflect the new data.

(d) Each person involved in the operation must be notified that a written program detailing corrective actions is available upon request.

(e) A copy of the written program must be furnished upon request to the Coast Guard.

§ 197.550 Respiratory protection.

(a) *General.* When the use of respirators in compliance with this section and the personal protective clothing and equipment in compliance with § 197.555 is chosen as the method or one of the methods in compliance with § 197.545 to be used in meeting the performance standard, the respirators used must be selected and fitted according to this section.

(b) *Respirator selection.* (1) The respirator must be approved by the Mine Safety and Health Administration (MSHA) in compliance with 30 CFR part 11. When filter elements are used, they must include MSHA approval for organic vapors or benzene.

(2) The employer shall provide affected employees with the appropriate respirators without charge and ensure that the respirators are used properly. Any employee determined by the testing physician as being unable to wear negative pressure respirators, who continues to be subject to exposure over

the PEL, must be given the option of wearing a respirator with less breathing resistance, such as a powered air-purifying respirator or a supplied air respirator.

(3) Electrically powered respiratory protective equipment must meet the electrical engineering requirements in subchapter J of this chapter and the electrical equipment requirements in part 151, table 151.05, and part 153, table 1, of this chapter.

(4) The type of respirator provided must be a type specified in table 197.550(b) of this section that is appropriate for the exposure.

TABLE 197.550(b).—RESPIRATORY PROTECTION FOR BENZENE

Airborne concentration of benzene or condition of use	Respirator type
Up to 10 times the TWA	(1) Half-mask air-purifying respirator with organic vapor cartridges.
Up to 50 times the TWA	(1) Full facepiece respirator with organic vapor cartridges. (2) Full facepiece gas mask with chin style canister.[1]
Up to 100 times the TWA	(1) Full facepiece powered air purifying respirator with organic vapor canister.[1]
Up to 1,000 times the TWA.	(1) Supplied air respirator with full facepiece in positive-pressure mode.
More than 1,000 times the TWA or unknown concentration.	(1) Self-contained breathing apparatus with full facepiece in positive pressure mode. (2) Full facepiece positive-pressure supplied-air respirator with auxiliary self-contained air supply.
Escape	(1) Any organic vapor gas mask. (2) Any self-contained breathing apparatus with full facepiece
Fire fighting	(1) Full facepiece self-contained breathing apparatus in positive pressure mode.

[1] Canisters for non-powered air purifying respirators must have a minimum service life of four hours when tested at 150 ppm benzene, at a flow rate of 64 liters/minute at 25°C and 85% relative humidity. Canisters for powered air-purifying respirators must have a flow rate of 115 liters/minute (for tight fitting respirators) or 170 liters/minute (for loose fitting respirators).

(c) *Respirator fit testing.* (1) Before the person is permitted to use a respirator selected and fitted in compliance with this section, the person must undergo an Initial Fit Test (IFT) and either a Qualitative Fit Test (QLFT) or a Quantitative Fit Test (QNFT), in compliance with Appendix E of this subpart, using the respirator fitted. If a negative pressure respirator is used, the QLFT or QNFT must be repeated at least once a year thereafter.

(2) The objective of the tests is to identify for the person a respirator which minimizes the chance of leakage.

(3) The person conducting the tests required by paragraph (c)(1) of this section must understand the purpose of these tests and how to perform them.

(4) The person conducting the tests required by paragraph (c)(1) of this section must certify the results by signing the test report.

(d) *Respirator fitting.* (1) Employees who are being fitted for respirators must be trained in the methods for properly fitting a respirator and informed of the factors which may affect a proper fit, such as beards, sideburns, dentures, eyeglasses, and goggles, and that an unobstructed sealing surface is critical in fitting a respirator. (See appendix E of this subpart).

(2) For employees requiring eye glasses, corrective lenses should be fitted to the respirator faceplate. As a temporary measure, glasses with short temple bars may be taped to the wearer's head. Contact lenses other than soft lenses or gas permeable lenses must not be worn with respirators.

(e) *Respirator use.* Persons wearing a respirator in a regulated area must be permitted to leave the regulated area to wash their face and respirator facepiece, as necessary, in order to prevent skin irritation associated with respirator use or, if an air-purifying respirator is used, to change the filter elements whenever the person wearing the respirator detects a change in breathing resistance or a chemical vapor breakthrough.

(f) *Respirator inspection.* Respirators must be inspected in accordance with ANSI Z88.2—1980, section 8.

(g) *Respirator maintenance.* (1) Respirators must be maintained in accordance with ANSI Z88.2—1980, section 8.

(2) During respirator cleaning, the rubber or elastomer parts of the respirator must be stretched and manipulated with a massaging action to keep the parts pliable and flexible and to keep the parts from taking a set during storage.

(3) The air purifying element of air-purifying respirators must be replaced when the employee detects breakthrough or after a period not to exceed eight hours, which ever comes first. The element must also be replaced at the start of each shift. An air purifying element with an end of useful life indicator approved by MSHA or NIOSH for benzene may be used until the indicator indicates end of useful life even if this exceeds eight hours.

(h) *Respirator storage.* Respirators must be stored in accordance with ANSI Z88.2—1980, section 8.

§ 197.555 Personal protective clothing and equipment.

(a) When the use of respirators in compliance with § 197.550 and the personal protective clothing and equipment in compliance with this section is chosen as the method or one of the methods required by § 197.545 to be used in meeting the performance standard, the clothing and equipment must meet the requirements of this section.

(b) The employer shall provide employees with the necessary personal protective clothing and equipment without charge and shall ensure that the clothing and equipment are worn or used properly.

(c) Employees must be provided with coveralls or a large apron, boots, gloves, and, if necessary, tight-fitting eye goggles to limit dermal exposure to, and prevent eye contact with, liquid benzene.

§ 197.560 Medical surveillance.

(a) *General.* (1) The employer must provide, and the employees must submit to, the medical surveillance examinations for employees, as required by this section.

(2) All medical surveillance procedures in compliance with this section, other than the pulmonary function test of paragraph (b)(5)(v) of this section and all laboratory tests, must be performed by, or under the supervision of, a licensed physician.

(3) The pulmonary function test of paragraph (b)(5)(v) of this section must be administered by a licensed physician or by a person who has completed a training course in spirometry sponsored by a governmental, academic, or professional institution.

(4) All laboratory tests must be conducted by a laboratory accredited by an accrediting organization acceptable to the Commandant.

(b) *Initial medical examination.* (1) Within December 16, 1991 the employer shall make available to the employees listed in paragraph (b)(2)(i) of this section an initial medical examination. Within six months all initial medical examinations must be completed, including those for the employees listed in paragraph (b)(2)(ii), and each employee notified of the results of that employee's examination.

(2) The initial medical examination must be made available to the following employees before they are permitted to enter or continue working in a workplace in which they will be or may be exposed to benzene:

(i) Employees who were exposed to more than 10 ppm of benzene as an eight-hour TWA on at least 30 calendar days during the year before October 17, 1991 and who were employed by their present employer during each of the 30 days.

(ii) Employees, other than employees defined in paragraph (b)(2)(i) of this section, who may reasonably be expected to be exposed to benzene at or above the action level on at least 30 calendar days, or at a level above a PEL on at least 10 calendar days, during the coming year.

(3) Exposure to benzene, as referred to in paragraph (b)(2) of this section, means any exposure to benzene, whether or not at the time of the exposure, the employee was or will be wearing an appropriate respirator in compliance with § 197.550 and the personal protective clothing and equipment in compliance with § 197.555.

(4) An initial medical examination is not required if the employer or employee has adequate records showing that the employee has had, within one year, an examination meeting the requirements of paragraph (b)(5) of this section.

(5) The initial medical examination must include at least the following elements:

(i) A detailed occupational history which includes a history of past work exposure to benzene or any other hematological toxin, a family history of blood dyscrasias including hematological neoplasms, a history of blood dyscrasias including genetic hemoglobin abnormalities, bleeding abnormalities, and abnormal functions of formed blood elements, a history of renal or liver dysfunction, a history of medicinal drugs routinely taken, a history of previous exposure to ionizing radiation, and a history of exposure to marrow toxins outside of the employee's current work situation. The employee must provide to the examining physician as complete an occupational history as possible for the period prior to the current employment.

(ii) A complete physical examination.

(iii) A complete blood count, including a leukocyte count, with differential, quantitative thrombocyte count, hematocrit, hemoglobin, erythrocyte count. and erythrocyte indices (MCV, MCH, MCHC). The results of these tests must be reviewed by the examining physician.

(iv) As determined necessary by the examining physician, additional tests based on alterations to the components of the blood or other signs which may be related to benzene exposure.

(v) For employees required to wear respirators for at least 30 days a year, a pulmonary function test.

(c) *Periodic medical examinations.* (1) The employer shall ensure that no one performs a benzene operation exceeding the level criteria of paragraph (b)(2) of this section without having undergone an initial medical examination and periodic medical examinations yearly thereafter. Also, those who in the previous year have performed benzene operations exceeding the level criteria of paragraph (b)(2) of this section shall undergo a periodic medical examination even if they will not perform benzene operations in the current year. Periodic examinations must include, at least, the following elements:

(i) A brief history regarding new exposure to potential marrow toxins, changes in medicinal drug use, and the appearance of physical signs relating to blood disorders.

(ii) A complete blood count, including a leukocyte count with differential, quantitative thrombocyte count, hematocrit, hemoglobin, erythrocyte count, and erythrocyte indices (MCV, MCH, MCHC). The results of these tests must be reviewed by the examining physician.

(iii) As determined necessary by the examining physician, additional tests based on alterations to the components of the blood or other signs which may be related to benzene exposure.

(2) If the employee develops signs and symptoms commonly associated with toxic exposure to benzene, the employee must be provided with an additional medical examination which includes those elements considered appropriate by the examining physician.

(3) For employees required to use respirators for at least 30 days a year, a pulmonary function test must be performed, and specific evaluation of the cardiopulmonary system must be made, at least every three years.

(d) *Additional examinations and referrals.* (1) If the results of the complete blood count laboratory test required for the initial or periodic medical examination indicate that any of the following abnormal conditions exist, the blood count must be retaken within four weeks:

(i) The hemoglobin or the hematocrit falls below the normal limit (outside the 95% confidence interval (C.I.)), as determined by the laboratory, or the hemoglobin or hematocrit shows a persistent downward trend from the employee's pre-exposure norms, if these findings can not be explained by other medical reasons.

(ii) The thrombocyte count varies more than 20 percent below the employee's most recent values or falls outside the normal limit (95% C.I.), as determined by the laboratory.

(iii) The leukocyte count is below 4,000 per cubic millimeter or there is an abnormal differential count.

(2) If the abnormal conditions persist, the employee must be referred by the examining physician to a hematologist or an internist for further evaluation, unless the physician has good reason to believe that the referral is unnecessary. (See appendix C of this subpart for examples of conditions in which referrals may be unnecessary.)

(3) The hematologist or internist must be provided with the information provided to the physician in compliance with paragraph (f) of this section and with the medical record in compliance with § 197.570(b).

(4) If the hematologist or internist determines that additional tests are needed, the employer shall ensure that these additional tests are provided. These test must be completed in thirty days, whether or not the employee continues to perform benzene operations.

(e) *Emergency medical examinations.* (1) Whenever an employee is exposed to benzene resulting from an emergency, a sample of that employee's urine must be taken at the end of the employee's shift and a urinary phenol test must be performed on the sample within 72 hours. Where due to unavoidable circumstances the sample can not be tested by a laboratory within 72 hours of exposure, the sample shall be frozen until it can be delivered to the laboratory. The specific gravity of the urine must be corrected to 1.024. Since certain foods and medications can result in elevated phenol levels, the employee must provide the physician with a dietary and medication history.

(2) If the result of the urinary phenol test is below 75 mg phenol/l of urine, no further testing is required.

(3) If the result of the urinary phenol test is equal to or greater than 75 mg phenol/l of urine, the employee's complete blood count including an erythrocyte count, a leukocyte count with differential, and a thrombocyte count must be taken at monthly intervals for a duration of three months following the emergency.

(4) If any of the conditions specified in paragraph (d)(1) of this section exists, the additional examinations and referrals specified in paragraph (d) of

this section must be performed and the employee must be provided with periodic medical examinations, if any are recommended by the examining physician.

(f) *Information provided to the physician.* The following information must be provided to the examining physician:

(1) A copy of this subpart and its appendices.

(2) A description of the affected employee's duties as they relate to the employee's exposure.

(3) The employee's actual or representative exposure level.

(4) A description of the respirator and personal protective clothing and equipment used or to be used, if any.

(5) Records of all previous employment-related medical examinations of the affected employee which were conducted while in the employ of the current employer and which have not been provided to the examining physician.

(g) *Physician's written opinion.* (1) The employer shall ensure that, within 45 days of each examination required by this section, the employer and the employee must be provided with a copy of the examining physician's written opinion of the examination.

(2) The written opinion must contain at least the following information:

(i) The occupationally pertinent results of the medical examination and tests.

(ii) All medical conditions, if any, of the employee which the examining physician believes would subject the employee to a greater than normal risk of material impairment of health if the employee is exposed again to benzene.

(iii) The examining physician's recommended limitations, if any, upon the employee's future exposure to benzene or use of respirators or other personal protective clothing or equipment.

(iv) A statement that the employee has been informed by the physician of the results of the medical examination and of all medical conditions of the employee resulting from benzene exposure which require further explanation or treatment.

(3) The physician's written opinion must not reveal specific records, findings, or diagnoses that have no bearing on the employee's ability to work in a benzene-exposed workplace, ability to use a respirator, or ability to use personal protective clothing or equipment.

(h) *Removal from exposure.* (1) From the time an employee is referred to a hematologist or internist in compliance with paragraph (d)(2) of this section, the employee must not be permitted to enter areas where personal exposure may exceed the action level until the physician determines in compliance with paragraph (h)(2) of this section that the employee again may enter those areas.

(2) After examination by and consultation with the hematologist or internist, the examining physician decides whether or not to permit the employee to enter areas where personal exposure may exceed the action level. The employee must provide the employer with a written copy of the physician's decision signed by the physician. If the decision recommends that the employee not be permitted to enter those areas, the decision must include the examining physician's opinion as to when the employee may be permitted to reenter those areas and the requirements for future medical examinations to review the decision.

(3) Within six months of the date a decision in compliance with paragraph (h)(2) of this section not to permit reentry is made, the employee must be provided with a follow-up examination and a decision of the examining physician (based on the follow-up examination and consultation with a hematologist or internist) as to whether reentry should be permitted and, if so, when, or whether it should be permanently prohibited.

§ 197.565 Notifying personnel of benzene hazards.

(a) *Material safety data sheet.* A material safety data sheet (MSDS) addressing benzene must be made available to all persons involved in the benzene operation. The MSDS must describe the physical and chemical characteristics, physical and health hazards, permissible exposure limits, precautions for safe handling and use, control measures such as personal protection equipment, and first aid procedures for benzene. A copy of appendices A and B of this subpart or a MSDS on benzene meeting the requirements of 29 CFR 1910.1200(g) is sufficient.

(b) *Training.* (1) All employees must be provided with training at the time of their initial assignment to a work area where benzene is present and, if exposures are above the action level, at least once a year thereafter. Employees transferring to a new work area must be provided with training specific to that new work area.

(2) The training must provide information on—

(i) Which operations on the vessel involve or may involve exposure to benzene;

(ii) The methods and observations that may be used to detect the presence or release of benzene;

(iii) The physical and health hazards associated with exposure to benzene;

(iv) The measures that may be taken and the equipment that may be used to protect persons from the hazards of benzene exposure;

(v) The proper selection, fitting, fit testing, and use of personal protective equipment in emergency situations;

(vi) The meaning of a regulated area and the means specified in § 197.535(c) to indicate a regulated area;

(vii) The contents of this subpart and of appendices A through E of this subpart and on where copies of this material are available; and

(viii) The medical surveillance program specified in § 197.560.

§ 197.570 Recordkeeping.

(a) *Record of personal exposure monitoring.* (1) The employer shall maintain an accurate record of all monitoring conducted in compliances with § 197.540 for three years.

(2) The record must include—

(i) The dates, number, duration, and results of each sample taken, and a description of the procedure used to determine representative personal exposures;

(ii) A description of the sampling and analytical methods used;

(iii) A description of the type of respirator and personal protective clothing and equipment worn, if any; and

(iv) The name, social security number, and job classification of each person monitored and of all other persons whose exposure the monitoring is intended to represent; and

(v) The exposure levels to which monitored persons were subjected, even if this level is below the PEL.

(b) *Medical record.* (1) The employer shall maintain an accurate medical record for each employee subjected to medical surveillance specified in § 197.560 for three years after the employee's employment is terminated.

(2) The record must include—

(i) The name and social security number of the employee;

(ii) The physician's written opinion on the initial, periodic, and special examinations of the employee, including the results of medical examinations and tests and all opinions and recommendations;

(iii) A list of medical complaints, if any, by the employee related to exposure to benzene;

(iv) A copy of the information provided to the physician required in § 197.560(f)(2) through (f)(5); and

(v) A copy of the employee's medical and work history related to exposure to benzene or other hematologic toxin.

(c) *Availability of records.* (1) All records required to be maintained by this section must be made available upon request to the Coast Guard.

(2) Records of personal exposure monitoring in compliance with (a) of this section must be provided upon request to persons involved in the operation.

(3) A copy of each item entered into the medical record in compliance with paragraph (b) of this section for a particular employee must be given to that employee at the time the item is entered into the medical record.

(4) Medical records required by paragraph (b) of this section must be provided to persons upon the written request of the subject employee.

(d) *Transfer of records.* (1) If the employer ceases to do business and there is no successor to receive and retain the records for the prescribed period, the employer shall make the best effort to transfer all records required in paragraphs (a) and (b) of this section relating to the affected employees to those employees for their disposition. Before transferring medical records to former employees, the employer shall determine whether any forwarding address provided by the employee is still valid and whether the employee desires the records. If a current or former employee refuses to accept the records or does not respond to notification of their availability, the records shall be destroyed.

(2) If the employer ceases to engage in operations involving benzene, the employer shall retain the records for inspection unless the employee requests them as provided in § 197.570(c).

(e) *Confidentiality of records.* Except as specifically required by this Subpart, the employer shall keep confidential all records required to be maintained by this Subpart.

§ 197.575 Observation of monitoring.

(a) Persons involved in benzene operations or their representatives must be provided with an opportunity to observe all monitoring in compliance with § 197.540. Coast Guard officials may also observe all monitoring in compliance with § 197.540.

(b) When observation of monitoring requires entry into regulated areas, the observers shall use respirator and personal protective clothing and equipment approved in compliance with this subpart and comply with § 197.530.

§ 197.580 Appendices.

(a) Appendices A through D and F of this subpart contain technical information on benzene and its effects and provide guidance for medical surveillance, monitoring, and measuring. The appendices are informational and advisory and do not create mandatory requirements.

(b) Appendix E of this subpart contains tests and procedures for fitting respirators. As required by § 197.550(d)(1), compliance with appendix E of this subpart is mandatory.

Appendix A to Subpart C—Sample Substance Safety Data Sheet, Benzene

I. Substance Identification

(a) *Substance:* Benzene.

(b) *Performance standard exposure limits:*

(1) Airborne: The maximum time-weighted average (TWA) exposure limit is one part of benzene vapor per million parts of air (one ppm) for an eight-hour workday and the maximum short-term exposure limit (STEL) is five ppm for any 15-minute period.

(2) Dermal: Eye contact must be prevented and skin contact with liquid benzene must be limited.

(c) *Appearance and odor:* Benzene is a clear, colorless liquid with a pleasant, sweet odor. The odor of benzene does not provide adequate warning of its hazard.

II. Health Hazard Data

(a) *Ways in which benzene affects your health.* Benzene can affect your health if you inhale it or if it comes in contact with your skin or eyes. Benzene is also harmful if you swallow it.

(b) *Effects of overexposure.* (1) Short-term (acute) overexposure: If you are overexposed to high concentrations of benzene, well above the levels where its odor is first recognizable, you may feel breathless, irritable, euphoric, or giddy and you may experience irritation in your eyes, nose, and respiratory tract. You may develop a headache, feel dizzy, nauseated, or intoxicated. Severe exposures may lead to convulsions and loss of consciousness.

(2) Long-term (chronic) exposure: Repeated or prolonged exposure to benzene, even at relatively low concentrations, may result in various blood disorders ranging from anemia to leukemia, an irreversible, fatal disease. Many blood disorders associated with benzene exposure may occur without symptoms.

III. Protective Clothing and Equipment

(a) *Respirators.* Respirators are required for those operations in which engineering controls or work practice controls are not feasible for reducing exposure to the permissible level or are not chosen as the method of complying with the performance standard. If respirators are worn, they must have joint Mine Safety and Health Administration and the National Institute for Occupational Safety and Health (NIOSH) seal of approval. Cartridges or canisters must be replaced before the end of their service life, or the end of the shift, whichever occurs first. If you experience difficulty breathing while wearing a respirator, you may request a positive pressure respirator from your employer. You must be thoroughly trained to use the assigned respirator, and the training will be provided by your employer.

(b) *Protective clothing.* You must wear appropriate protective clothing (such as boots, gloves, sleeves, and aprons) over any parts of your body that could be exposed to liquid benzene.

(c) *Eye and face protection.* You must wear splash-proof safety goggles if it is possible that benzene may get into your eyes. In addition, you must wear a face shield if your face could be splashed with benzene liquid.

IV. Emergency and First Aid Procedures

(a) *Eye and face exposure.* If benzene is splashed in your eyes, wash it out immediately with large amounts of water. If irritation persists or vision appears to be affected, see a doctor as soon as possible.

(b) *Skin exposure.* If benzene is spilled on your clothing or skin, remove the contaminated clothing and wash the exposed skin with large amounts of water and soap immediately. Wash contaminated clothing before you wear it again.

(c) *Breathing.* If you or any other person breathes in large amounts of benzene, get the exposed person to fresh air at once. Apply artificial respiration if breathing has stopped. Call for medical assistance or a doctor as soon as possible. Never enter any vessel or confined space where the benzene concentration might be high without proper safety equipment and with at least one other person present who will stay outside. A life line should be used.

(d) *Swallowing.* If benzene has been swallowed and the subject is conscious, do not induce vomiting. Call for medical assistance or a doctor immediately.

V. Medical Requirements

If you will be exposed to benzene at a concentration at or above 0.5 ppm as an eight-hour time-weighted average or have been exposed at or above 10 ppm

in the past while employed by your current employer, your employer may be required by 46 CFR 197.560 to provide a medical examination and history and laboratory tests. These tests must be provided without cost to you. In addition, if you are accidentally exposed to benzene (either by ingestion, inhalation, or skin/eye contact) under emergency conditions known or suspected to constitute a toxic exposure to benzene, your employer is required to make special laboratory tests available to you.

VI. Observation of Monitoring

The employer is required to conduct monitoring that is representative of your exposure to benzene, and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you or your representative must wear the protective clothing and equipment (See 46 CFR 197.575.)

VII. Access to Records

You or your representative may see the records of monitoring of your exposure to benzene upon written request to your employer. Your medical examination records may be furnished to you, your physician, or a representative designated by you. (See 46 CFR 197.570(c).)

VIII. Precautions for Safe Use, Handling, and Storage

Benzene liquid is highly flammable. Benzene vapor may form explosive mixtures in air. All sources of ignition must be controlled. Use non-sparking tools when opening or closing benzene containers. Fire extinguishers, where required, must be readily available. Know where they are located and how to operate them. Smoking is prohibited in areas where benzene is used or stored.

Appendix B to Subpart C—Substance Technical Guidelines, Benzene

I. Physical and Chemical Data

(a) *Substance identification.* (1) Synonyms: Benzol, benzole, coal naphtha, cyclohexatriene, phene, phenyl hydride, pyrobenzol. (Benzin, petroleum benzin, and benzine do not contain benzene).

(2) Formula: C_6H_6 (CAS Registry Number 71–43–2).

(b) *Physical data.* (1) Boiling point (760 mm Hg): 80.1 °C (176 °F).

(2) Specific gravity (water = 1): 0.879.

(3) Vapor density (air = 1): 2.7.

(4) Melting point: 5.5 °C (42 °F).

(5) Vapor pressure at 20 °C (68 °F): 75 mm Hg.

(6) Solubility in water: .06%.

(7) Evaporation rate (ether = 1): 2.8.

(8) Appearance and odor: Clear, colorless liquid with a distinctive sweet odor.

II. Fire, Explosion, and Reactivity Hazard Data

(a) *Fire.* (1) Flash point (closed cup): −11 °C (12 °F).

(2) Autoignition temperature: 580 °C (1076 °F).

(3) Flammable limits in air, % by volume: Lower: 1.3%, Upper: 7.5%.

(4) Extinguishing media: Carbon dioxide, dry chemical, or foam.

(5) Special fire fighting procedures: Do not use a solid stream of water, because it will scatter and spread the fire. Fine water spray may be used to keep fire-exposed containers cool.

(6) Unusual fire and explosion hazards: Benzene is a flammable liquid. Its vapors can form explosive mixtures. All ignition sources must be controlled when benzene is used, handled, or stored. Areas where liquid or vapor may be released are considered hazardous locations. Benzene vapors are heavier than air. Thus, benzene vapors may travel along the deck and ground and be ignited by open flames or sparks at locations remote from the site at which benzene is handled.

(7) Benzene is classified as a flammable liquid for the purpose of conforming to the requirements of 49 CFR 172.101 concerning the designation of materials as hazardous materials. Locations where benzene may be present in quantities sufficient to produce explosive or ignitable mixtures are considered Class I Group D locations for the purposes of conforming to the requirements of 46 CFR parts 30 through 40, 151, and 153 when determining the requirements for electrical equipment as specified in Subchapter J (Electrical engineering).

(b) *Reactivity.* (1) Conditions contributing to instability: Heat.

(2) Incompatibility: Heat and oxidizing materials.

(3) Hazardous decomposition products: Toxic gases and vapors (such as carbon monoxide).

III. Spill and Leak Procedures

(a) *Steps to be taken if the material is released or spilled.* As much benzene as possible should be absorbed with suitable materials, such as dry sand or earth. That remaining must be flushed with large amounts of water. Do not flush benzene into a confined space, such as a sewer, because of explosion danger. Remove all ignition sources. Ventilate enclosed places.

(b) *Waste disposal method.* Disposal methods must conform to state and local regulations. If allowed, benzene may be disposed of (a) by absorbing it in dry sand or earth and disposing in a sanitary landfill, (b), if in small quantities, by removing it to a safe location away from buildings or other combustible sources or by pouring onto dry sand or earth and cautiously igniting it, and (c), if in large quantities, by atomizing it in a suitable combustion chamber.

Appendix C to Subpart C—Medical Surveillance Guidelines for Benzene

I. Route of Entry

Inhalation; skin absorption.

II. Toxicology

Benzene is primarily an inhalation hazard. Systemic absorption may cause depression of the hematopoietic system, pancytopenia, aplastic anemia, and leukemia. Inhalation of high concentrations may affect the functioning of the central nervous system. Aspiration of small amounts of liquid benzene immediately causes pulmonary edema and hemorrhage of pulmonary tissue. There is some absorption through the skin. Absorption may be more rapid in the case of abraded skin or if it is present in a mixture or as a contaminant in solvents which are readily absorbed. The defatting action of benzene may produce primary irritation due to repeated or prolonged contact with the skin. High concentrations are irritating to the eyes and the mucous membranes of the nose and respiratory tract.

III. Signs and Symptoms

Direct skin contact with benzene may cause erythema. Repeated or prolonged contact may result in drying, scaling dermatitis or development of secondary skin infections. In addition, benzene is absorbed through the skin. Local effects of benzene vapor or liquid on the eye are slight. Only at very high concentrations is there any smarting sensation in the eye. Inhalation of high concentrations of benzene may have an initial stimulatory effect on the central nervous system characterized by exhilaration, nervous excitation, or giddiness, followed by a period of depression, drowsiness, or fatigue. A sensation of tightness in the chest

accompanied by breathlessness may occur and ultimately the victim may lose consciousness. Tremors, convulsions, and death may follow from respiratory paralysis or circulatory collapse in a few minutes to several hours following severe exposures.

The detrimental effect on the blood-forming system of prolonged exposure to small quantities of benzene vapor is of extreme importance. The hematopoietic system is the chief target for benzene's toxic effects which are manifested by alterations in the levels of formed elements in the peripheral blood. These effects may occur at concentrations of benzene which may not cause irritation of mucous membranes or any unpleasant sensory effects. Early signs and symptoms of benzene morbidity are varied. Often, they are not readily noticed and are non-specific. Complaints of headache, dizziness, and loss of appetite may precede or follow clinical signs. Rapid pulse and low blood pressure, in addition to a physical appearance of anemia, may accompany a complaint of shortness of breath and excessive tiredness. Bleeding from the nose, gums, or mucous membranes and the development of purpuric spots (small bruises) may occur as the condition progresses. Clinical evidence of leukopenia, anemia, and thrombocytopenia, singly or in combination, may be among the first signs.

Bone marrow may appear normal, aplastic, or hyperplastic and may not, in all situations, correlate with peripheral blood forming tissues. Because of variations in the susceptibility to benzene morbidity, there is no "typical" blood picture. The onset of effects of prolonged benzene exposure may be delayed for many months or years after the actual exposure has ceased. Identification or correlation with benzene exposure must be sought out in the occupational history.

IV. Treatment of Acute Toxic Effects

Remove from exposure immediately. Make sure you are adequately protected and do not risk being overcome by fumes. Give oxygen or artificial resuscitation, if indicated. Flush eyes, wash skin if contaminated, and remove all contaminated clothing. Symptoms of intoxication may persist following severe exposures. Recovery from mild exposures is usually rapid and complete.

V. Surveillance and Preventive Considerations

(a) *General.* The principal effects of benzene exposure addressed in 46 CFR part 197, subpart C, appendix A, are pathological changes in the hematopoietic system, reflected by changes in the peripheral blood and manifested clinically as pancytopenia, aplastic anemia, or leukemia. Consequently, the medical surveillance program specified in 46 CFR 197.560 is designed to observe, on a regular basis, blood indices for early signs of these effects. Although early signs of leukemia are not usually available, emerging diagnostic technology and innovative regimes are making consistent surveillance for leukemia, as well as other hematopoietic effects, more and more beneficial.

Initial and periodic medical examinations must be provided as required in 46 CFR 197.560. There are special provisions for medical tests in the event of hematologic abnormalities or emergencies.

The blood values which require referral to a hematologist or internist are noted in 46 CFR 197.560(d) (i), (ii), and (iii). That section specifies that, if blood abnormalities persist, the employee must be referred unless the physician has good reason to believe that the referral is unnecessary. Examples of conditions that might make a referral unnecessary despite abnormal blood limits are iron or folate deficiency, menorrhagia, or blood loss due to some unrelated medical abnormality.

Symptoms and signs of benzene toxicity can be non-specific. Only a detailed history and appropriate investigative procedures will enable a physician to rule out or confirm conditions that place the employee at increased risk. To assist the examining physician with regard to which laboratory tests are necessary and when to refer an employee to the specialist, the following guidelines have been established.

(b) *Hematology Guidelines.* A minimum battery of tests is to be performed by strictly standardized methods.

(1) Red cell, white cell, platelet counts, white blood cell differential, hematocrit, and red cell indices must be performed by an accredited laboratory. The normal ranges for the red cell and white cell counts are influenced by altitude, race, and sex and, therefore, should be determined by an accredited laboratory in the specific area where the tests are performed.

Either a decline from an absolute normal or from an individual's base line to a subnormal value or a rise to a supra-normal value are indicative of potential toxicity, particularly if all blood parameters decline. The normal total white blood count is approximately 7,200/mm ^{3} plus or minus 3,000. For cigarette smokers, the white count may be higher and the upper range may be 2,000 cells higher than normal for the laboratory. In addition, infection, allergies, and some drugs may raise the white cell count. The normal platelet count is approximately 250,000 with a range of 140,000 to 400,000. Counts outside this range should be regarded as possible evidence of benzene toxicity.

Certain abnormalities found through routine screening are of greater significance in the benzene-exposed worker and require prompt consultation with a specialist, namely:

(i) Thrombocytopenia.

(ii) A trend of decreasing white cell, red cell, or platelet indices in an individual over time is more worrisome than an isolated abnormal finding at one test time. The importance of a trend highlights the need to compare an individual's test results to baseline, to previous periodic tests, or to both.

(iii) A constellation or pattern of abnormalities in the different blood indices is of more significance than a single abnormality. A low white count not associated with any abnormalities in other cell indices may be a normal statistical variation. Whereas, if the low white count is accompanied by decreases in the platelet and/or red cell indices, such a pattern is more likely to be associated with benzene toxicity and merits thorough investigation.

Anemia, leukopenia, macrocytosis, or an abnormal differential white blood cell count should alert the physician to investigate further and to refer the patient if repeat tests confirm the abnormalities. If routine screening detects an abnormality, the follow-up tests which may be helpful in establishing the etiology of the abnormality are the peripheral blood smear and the reticulocyte count.

The extreme range of normal for reticulocytes is 0.4 to 2.5 percent of the red cells. The usual range is 0.5 to 1.2 percent of the red cells. A decline in reticulocytes to levels of less than 0.4 percent is to be regarded as possible evidence of benzene toxicity requiring accelerated surveillance (unless another specific cause is found). An increase in reticulocyte levels to above 2.5 percent also may be consistent with, but not characteristic of, benzene toxicity.

(2) A careful examination of the peripheral blood smear is an important diagnostic test. As with the reticulocyte count, the smear should be with fresh uncoagulated blood obtained from a needle tip following venipuncture or from a drop of earlobe blood (capillary blood). If necessary, the smear may, under certain limited conditions, be made from a blood sample

anticoagulated with EDTA (but never with oxalate or heparin). When the smear is to be prepared from a specimen of venous blood which has been collected by a commercial Vacutainer® type tube containing neutral EDTA, the smear should be made as soon as possible after the venesection. A delay of up to 12 hours is permissible between the drawing of the blood specimen into EDTA and the preparation of the smear if the blood is stored at refrigerator (not freezing) temperature.

(3) The minimum mandatory observations to be made from the smear are as follows:

(i) The differential white blood cell count.

(ii) Description of abnormalities in the appearance of red cells.

(iii) Description of any abnormalities in the platelets.

(iv) A careful search must be made of every blood smear for immature white cells such as band forms (in more than normal proportion, i.e., over ten percent of the total differential count), any number of metamyelocytes, myelocytes, or myeloblasts. Any nucleate or multinucleated red blood cells should be reported. Large "giant" platelets or fragments of megakaryocytes must be recognized.

An increase in the proportion of band forms among the neutrophilic granulocytes is an abnormality deserving special mention. Such an increase may represent a change which should be considered as an early warning of benzene toxicity in the absence of other causative factors (most commonly infection). Likewise, the appearance of metamyelocytes, in the absence of another probable cause, is to be considered a possible indication of benzene-induced toxicity.

An upward trend in the number of basophils, which normally do not exceed about 2.0 percent of the total white cells, is to be regarded as possible evidence of benzene toxicity. A rise in the eosinophil count is less specific but may indicate toxicity if the rise is above 6.0 percent of the total white count.

The normal range of monocytes is from 2.0 to 8.0 percent of the total white count with an average of about 5.0 percent. About 20 percent of individuals reported to have mild but persisting abnormalities caused by exposure to benzene show a persistent monocytosis. The findings of a monocyte count which persists at more than ten to 12 percent of the normal white cell count (when the total count is normal) or persistence of an absolute monocyte count in excess of 800/mm ^{3} should be regarded as a possible sign of benzene-induced toxicity.

A less frequent but more serious indication of benzene toxicity is the finding in the peripheral blood of the so-called "pseudo" (or acquired) Pelger-Huet anomaly. In this anomaly, many, or sometimes the majority, of the neutrophilic granulocytes possess two round nuclear segments, or, less often, one or three round segments, rather than three normally elongated segments. When this anomaly is not hereditary, it is often, but not invariably, predictive of subsequent leukemia. However, only about two percent of patients who ultimately develop acute myelogenous leukemia show the acquired Pelger-Huet anomaly. Other tests that can be administered to investigate blood abnormalities are discussed below. However, these tests should be undertaken by the hematologist.

An uncommon sign, which cannot be detected from the smear but can be elicited by a "sucrose water test" of peripheral blood, is transient paroxysmal nocturnal hemoglobinuria (PNH). This sign may first occur insidiously during a period of established aplastic anemia and may be followed within one to a few years by the appearance of rapidly fatal, acute myelogenous leukemia. Clinical detection of PNH, which occurs in only one or two percent of those destined to have acute myelogenous leukemia, may be difficult. If the "sucrose water test" is positive, the somewhat more definitive Ham test, also known as the acid-serum hemolysis test, may provide confirmation.

(v) Individuals documented to have developed acute myelogenous leukemia years after initial exposure to benzene may have progressed through a preliminary phase of hematologic abnormality. In some instances, pancytopenia (i.e., a lowering in the counts of all circulating blood cells of bone marrow origin, but not to the extent implied by the term "aplastic anemia") preceded leukemia for many years. Depression of a single blood cell type or platelets may represent a harbinger of aplasia or leukemia. The finding of two or more cytopenias or pancytopenia in a benzene-exposed individual must be regarded as highly suspicious of more advanced, although still reversible, toxicity. Pancytopenia coupled with the appearance of immature cells (myelocytes, myeloblasts, erythroblasts, etc.) with abnormal cells (pseudo Pelger-Huet anomaly, atypical nuclear heterochromatin, etc.) or of unexplained elevations of white blood cells must be regarded as evidence of benzene overexposure, unless proved otherwise. Many severely aplastic patients manifested the ominous finding of five to ten percent myeloblasts in the marrow, occasional myeloblasts and myelocytes in the blood, and 20 to 30 percent monocytes. It is evident that isolated cytopenias, pancytopenias, and even aplastic anemias induced by benzene may be reversible and complete recovery has been reported on cessation of exposure. However, because any of these abnormalities is serious, the employee must immediately be removed from any possible exposure to benzene vapor. Certain tests may substantiate the employee's prospects for progression or regression. One such test would be an examination of the bone marrow, but the decision to perform a bone marrow aspiration or needle biopsy must be made by the hematologist.

The findings of basophilic stippling in circulating red blood cells (usually found in one to five percent of red cells following marrow injury) and detection in the bone marrow of what are termed "ringed sideroblasts" must be taken seriously, as they have been noted in recent years to be premonitory signs of subsequent leukemia.

Recently peroxidase-staining of circulating or marrow neutrophil granulocytes, employing benzidine dihydrochloride, have revealed the disappearance of, or diminution in, peroxidase in a sizable proportion of the granulocytes. This has been reported as an early sign of leukemia. However, relatively few patients have been studied to date. Granulocyte granules are normally strongly peroxidase positive. A steady decline in leukocyte alkaline phosphatase has also been reported as suggestive of early acute leukemia. Exposure to benzene may cause an early rise in serum iron, often but not always associated with a fall in the reticulocyte count. Thus, serial measurements of serum iron levels may provide a means of determining whether or not there is a trend representing sustained suppression of erythropoiesis.

Measurement of serum iron and determination of peroxidase and of alkaline phosphatase activity in peripheral granulocytes can be performed in most pathology laboratories. Peroxidase and alkaline phosphatase staining are usually undertaken when the index of suspicion for leukemia is high.

APPENDIX D TO SUBPART C—SAMPLING AND ANALYTICAL METHODS FOR BENZENE MONITORING—MEASUREMENT PROCEDURES

Measurements taken for the purpose of determining employee exposure to benzene are best taken so that the representative average eight-hour exposure may be determined from a single eight-hour sample or two four-hour samples. Short-time interval samples (or grab samples) may also be used to determine average exposure level if a minimum of five measurements are taken in a random manner over the eight-hour work shift. In random sampling, any portion of the work shift has the same chance of being sampled as any other. The arithmetic average of all random samples taken on one work shift is an estimate of an employee's average level of exposure for that work shift. Air samples should be taken in the employee's breathing zone (i.e., air that would most nearly represent that inhaled by the employee). Sampling and analysis must be performed with procedures meeting the requirements of 46 CFR part 197, subpart C.

There are a number of methods available for monitoring employee exposures to benzene. The sampling and analysis may be performed by collection of the benzene vapor on charcoal adsorption tubes, with subsequent chemical analysis by gas chromatography. Sampling and analysis also may be performed by portable direct reading instruments, real-time continuous monitoring systems, passive dosimeters, or other suitable methods. The employer is required to select a monitoring method which meets the accuracy and precision requirements of 46 CFR 197.540(a)(6) for the weather conditions expected. Section 197.540(a)(6) requires that monitoring must have an accuracy, to a 95 percent confidence level, of not less than plus or minus 25 percent for concentrations of benzene greater than or equal to 0.5 ppm.

In developing the following analytical procedures, the OSHA Laboratory modified NIOSH Method S311 and evaluated it at a benzene air concentration of one ppm. A procedure for determining the benzene concentration in bulk material samples was also evaluated. This work, as reported in OSHA Laboratory Method No. 12, includes the following two analytical procedures:

I. OSHA Method 12 for Air Samples

Analyte: Benzene.
Matrix: Air.

Procedure: Adsorption on charcoal, desorption with carbon disulfide, analysis by gas chromatograph.

Detection limit: 0.04 ppm.

Recommended air volume and sampling rate: 10 liter at 0.2 liter/min.

1. Principle of the method

1.1. A known volume of air is drawn through a charcoal tube to trap the organic vapors present.

1.2. The charcoal in the tube is transferred to a small, stoppered vial and the analyte is desorbed with carbon disulfide.

1.3. An aliquot of the desorbed sample is injected into a gas chromatograph.

1.4. The area of the resulting peak is determined and compared with areas obtained from standards.

2. Advantages and disadvantages of the method

2.1. The sampling device is small, portable, and involves no liquids. Interferences are minimal and most of those which do occur can be eliminated by altering chromatographic conditions. The samples are analyzed by means of a quick, instrumental method.

2.2. The amount of sample which can be taken is limited by the number of milligrams that the tube will hold before overloading. When the sample value obtained for the backup section of the charcoal tube exceeds 25 percent of that found on the front section, the possibility of sample loss exists.

3. Apparatus

3.1. A calibrated personal sampling pump having a flow that can be determined within ± five percent at the recommended flow rate.

3.2. Charcoal tubes: Glass with both ends flame sealed, seven cm long with a six mm O.D. and a four mm I.D., containing two sections of 20/40 mesh activated charcoal separated by a two mm portion of urethane foam. The activated charcoal is prepared from coconut shells and is fired at 600 °C before packing. The adsorbing section contains 100 mg of charcoal and the back-up section 50 mg. A three mm portion of urethane foam is placed between the outlet end of the tube and the back-up section. A plug of silanized glass wool is placed in front of the adsorbing section. The pressure drop across the tube must be less than one inch of mercury at a flow rate of one liter per minute.

3.3. Gas chromatograph equipped with a flame ionization detector.

3.4. Column (10 ft. x 1/8 in. stainless steel) packed with 80/100 Supelcoport coated with 20 percent SP 2100 and 0.1 percent CW 1500.

3.5. An electronic integrator or some other suitable method for measuring peak area.

3.6. Two-milliliter sample vials with Teflon-lined caps.

3.7. Microliter syringes: ten microliter (ten μl) syringe, and other convenient sizes for making standards. One μl syringe for sample injections.

3.8. Pipets: 1.0 ml delivery pipets.

3.9. Volumetric flasks: convenient sizes for making standard solutions.

4. Reagents

4.1. Chromatographic quality carbon disulfide (CS_2). Most commercially available carbon disulfide contains a trace of benzene which must be removed. It can be removed with the following procedure. Heat, under reflux for two to three hours, 500 ml of carbon disulfide, ten ml concentrated sulfuric acid, and five drops of concentrated nitric acid. The benzene is converted to nitrobenzene. The carbon disulfide layer is removed, dried with anhydrous sodium sulfate, and distilled. The recovered carbon disulfide should be benzene free. (It has recently been determined that benzene can also be removed by passing the carbon disulfide through a 13x molecular sieve).

4.2. Benzene, reagent grade.

4.3. p-Cymene, reagent grade, (internal standard).

4.4. Desorbing reagent. The desorbing reagent is prepared by adding 0.05 ml of p-cymene per milliliter of carbon disulfide. (The internal standard offers a convenient means correcting analytical response for slight inconsistencies in the size of sample injections. If the external standard technique is preferred, the internal standard can be eliminated.)

4.5. Purified GC grade helium, hydrogen, and air.

5. Procedure

5.1. Cleaning of equipment. All glassware used for the laboratory analysis should be properly cleaned and free of organics which could interfere in the analysis.

5.2. Calibration of personal pumps. Each pump must be calibrated with a representative charcoal tube in the line.

5.3. Collection and shipping of samples.

5.3.1. Immediately before sampling, break the ends of the tube to provide an opening at least one-half the internal diameter of the tube (two mm).

5.3.2. The smaller section of the charcoal is used as the backup and should be placed nearest the sampling pump.

5.3.3. The charcoal tube should be placed in a vertical position during

sampling to minimize channeling through the charcoal.

5.3.4. Air being sampled should not be passed through any hose or tubing before entering the charcoal tube.

5.3.5. A sample size of 10 liters is recommended. Sample at a flow rate of approximately 0.2 liters per minute. The flow rate should be known with an accuracy of at least ± five percent.

5.3.6. The charcoal tubes should be capped with the supplied plastic caps immediately after sampling.

5.3.7. Submit at least one blank tube (a charcoal tube subjected to the same handling procedures, without having any air drawn through it) with each set of samples.

5.3.8. Take necessary shipping and packing precautions to minimize breakage of samples.

5.4. Analysis of samples.

5.4.1. Preparation of samples. In preparation for analysis, each charcoal tube is scored with a file in front of the first section of charcoal and broken open. The glass wool is removed and discarded. The charcoal in the first (larger) section is transferred to a two ml vial. The separating section of foam is removed and discarded and the second section is transferred to another capped vial. These two sections are analyzed separately.

5.4.2. Desorption of samples. Before analysis, 1.0 ml of desorbing solution is pipetted into each sample container. The desorbing solution consists of 0.05 μl internal standard per milliliter of carbon disulfide. The sample vials are capped as soon as the solvent is added. Desorption should be done for 30 minutes with occasional shaking.

5.4.3. GC conditions. Typical operating conditions for the gas chromatograph are as follows:

1. 30 ml/min (60 psig) helium carrier gas flow.
2. 30 ml/min (40 psig) hydrogen gas flow to detector.
3. 240 ml/min (40 psig) air flow to detector.
4. 150 °C injector temperature.
5. 250 °C detector temperature.
6. 100 °C column temperature.

5.4.4. Injection size. One μl.

5.4.5. Measurement of area. The peak areas are measured by an electronic integrator or some other suitable form of area measurement.

5.4.6. An internal standard procedure is used. The integrator is calibrated to report results in ppm for a 10 liter air sample after correction for desorption efficiency.

5.5. Determination of desorption efficiency.

5.5.1. Importance of determination. The desorption efficiency of a particular compound may vary from one laboratory to another and from one lot of chemical to another. Thus, it is necessary to determine, at least once, the percentage of the specific compound that is removed in the desorption process, provided the same batch of charcoal is used.

5.5.2. Procedure for determining desorption efficiency. The reference portion of the charcoal tube is removed. To the remaining portion, amounts representing 0.5X, 1X, and 2X (X represents target concentration) based on a 10 liter air sample, are injected into several tubes at each level. Dilutions of benzene with carbon disulfide are made to allow injection of measurable quantities. These tubes are then allowed to equilibrate at least overnight. Following equilibration, they are analyzed following the same procedure as the samples. Desorption efficiency is determined by dividing the amount of benzene found by amount spiked on the tube.

6. Calibration and standards

A series of standards varying in concentration over the range of interest is prepared and analyzed under the same GC conditions that will be used on the samples. A calibration curve is prepared by plotting concentration (μg/ml) versus peak area.

7. Calculations

Benzene air concentration can be calculated from the following equation:

$mg/m^3=(A)(B)/(C)(D)$

Where: A=μg/ml benzene, obtained from the calibration curve;
B=desorption volume (one ml);
C=liters of air sampled; and
D=desorption efficiency.

The concentration in mg/m^3 can be converted to ppm (at 25° and 760 mm) with following equation:

$ppm=(mg/m^3)(24.46)/(78.11)$.

Where: 24.46=molar volume of an ideal gas 25 °C and 760 mm; and 78.11=molecular weight of benzene.

8. Backup data

8.1 Detection limit—Air Samples. The detection limit for the analytical procedure is 1.28 ng with a coefficient of variation of 0.023 at this level. This would be equivalent to an air concentration of 0.04 ppm for a 10 liter air sample. This amount provided a chromatographic peak that could be identifiable in the presence of possible interferences. The detection limit data were obtained by making one μl injections of a 1.283 μg/ml standard.

Injection	Area count	
1	655.4	
2	617.5	
3	662.0	X=640.2
4	641.1	SD=14.9
5	636.4	CV=0.023
6	629.2	

8.2 Pooled coefficient of variation—Air Samples. The pooled coefficient of variation for the analytical procedure was determined by one μl replicate injections of analytical standards. The standards were 16.04, 32.08, and 64.16 μg/ml, which are equivalent to 0.5, 1.0, and 2.0 ppm for a 10 liter air sample respectively.

8.3 Storage data—Air Samples. Samples were generated at 1.03 ppm benzene at 80% relative humidity, 22 °C, and 643 mm. All samples were taken for 50 minutes at 0.2 liters/min. Six samples were analyzed immediately and the rest of the samples were divided into two groups by fifteen samples each. One group was stored at refrigerated temperature of −25 °C and the other group was stored at ambient temperature (approximately 23 °C). These samples were analyzed over a period of fifteen days. The results are tabulated below.

Injection	Area counts		
	0.5 ppm	1.0 ppm	2.0 ppm
1	3996.5	8130.2	16481
2	4059.4	8235.6	16493
3	4052.0	8307.9	16535
4	4027.2	8263.2	16609
5	4046.8	8291.1	16552
6	4137.9	8288.8	16618
X=	4053.3	8254.0	16548.3
SD=	47.2	62.5	57.1
CV=	0.0116	0.0076	0.0034
CV=0.008			

PERCENT RECOVERY

Day analyzed	Refrigerated			Ambient		
0	97.4	98.7	98.9	97.4	98.7	98.9
0	97.1	100.6	100.9	97.1	100.6	100.9
2	95.8	96.4	95.4	95.4	96.6	96.9
5	93.9	93.7	92.4	92.4	94.3	94.1
9	93.6	95.5	94.6	95.2	95.6	96.6
13	94.3	95.3	93.7	91.0	95.0	94.6
15	96.8	95.8	94.2	92.9	96.3	95.9

8.4 Desorption data. Samples were prepared by injecting liquid benzene onto the A section of charcoal tubes. Samples were prepared that would be equivalent to 0.5, 1.0, and 2.0 ppm for a 10 liter air sample.

PERCENT RECOVERY

Sample	0.5 ppm	1.0 ppm	2.0 ppm
1	99.4	98.8	99.5
2	99.5	98.7	99.7
3	99.2	98.6	99.8
4	99.4	99.1	100.0
5	99.2	99.0	99.7
6	99.8	99.1	99.9
X=	99.4	98.9	99.8
SD=	0.22	0.21	0.18
CV=	0.0022	0.0021	0.0018
X=99.4			

8.5 Carbon disulfide. Carbon disulfide from a number of sources was analyzed for benzene contamination. The results are given in the following table. The benzene contaminant can be removed with the procedures given in section I.4.1.

Sample	μg Benzene/ml	ppm equivalent (for 10 liter air sample)
ALDRICH Lot 83017	4.20	0.13
BAKER Lot 720364	1.01	0.03
BAKER Lot 822351	1.01	0.03
Malinkrodt Lot WEMP	1.74	0.05
Malinkrodt Lot WDSJ	5.65	0.18
Malinkrodt Lot WHGA	2.90	0.09
Treated CS_2		

II. OSHA Laboratory Method No. 12 for Bulk Samples

Analyte: Benzene.

Matrix: Bulk Samples.

Procedure: Bulk samples are analyzed directly by high performance liquid chromatography (HPLC).

Detection limits: 0.01% by volume.

1. Principle of the method

1.1. An aliquot of the bulk sample to be analyzed is injected into a liquid chromatograph.

1.2. The peak area for benzene is determined and compared to areas obtained from standards.

2. Advantages and disadvantages of the method

2.1. The analytical procedure is quick, sensitive, and reproducible.

2.2. Reanalysis of samples is possible.

2.3. Interferences can be circumvented by proper selection of HPLC parameters.

2.4. Samples must be free of any particulates that may clog the capillary tubing in the liquid chromatograph. This may require distilling the sample or clarifying with a clarification kit.

3. Apparatus

3.1. Liquid chromatograph equipped with a UV detector.

3.2. HPLC Column that will separate benzene from other components in the bulk sample being analyzed. The column used for validation studies was a Waters uBondapack C18, 30 cm×3.9 mm.

3.3. A clarification kit to remove any particulates in the bulk if necessary.

3.4. A micro-distillation apparatus to distill any samples if necessary.

3.5. An electronic integrator or some other suitable method of measuring peak areas.

3.6. Microliter syringes—ten μl syringe and other convenient sizes for making standards. 10 μl syringe for sample injections.

3.7. Volumetric flasks, five ml and other convenient sizes for preparing standards and making dilutions.

4. Reagents

4.1. Benzene, reagent grade.

4.2. HPLC grade water, methyl alcohol, and isopropyl alcohol.

5. Collection and shipment of samples

5.1. Samples should be transported in glass containers with Teflon-lined caps.

5.2. Samples should not be put in the same container used for air samples

6. Analysis of samples

6.1. Sample preparation. If necessary, the samples are distilled or clarified. Samples are analyzed undiluted. If the benzene concentration is out of the working range, suitable dilutions are made with isopropyl alcohol.

6.2. HPLC conditions. The typical operating conditions for the high performance liquid chromatograph are:

6.2.1. Mobile phase—Methyl alcohol/water, 50/50.

6.2.2. Analytical wavelength—254 nm.

6.2.3. Injection size—10 μl.

6.3. Measurement of peak area and calibration. Peak areas are measured by an integrator or other suitable means. The integrator is calibrated to report results in % benzene by volume.

7. Calculations

Because the integrator is programmed to report results in % benzene by volume in an undiluted sample, the following equation is used: % Benzene by Volume=A×B.

Where: A=% by volume on report. B=Dilution Factor. (B=one for undiluted sample).

8. Backup data

8.1. Detection limit—Bulk Samples. The detection limit for the analytical procedure for bulk samples is 0.88 μg, with a coefficient of variation of 0.019 at this level. This amount provided a chromatographic peak that could be identifiable in the presence of possible interferences. The detection limit date were obtained by making ten μl injections of a 0.10% by volume standard.

Injection	Area Count	
1	45386	
2	44214	
3	43822	X=44040.1
4	44062	SD=852.5
6	42724	CV=0.019

8.2. Pooled coefficient of variation—Bulk Samples. The pooled coefficient of variation for the analytical procedure was determined by 50 μl replicate injections of analytical standards. The standards were 0.01, 0.02, 0.04, 0.10, 1.0, and 2.0% benzene by volume.

AREA COUNT (PERCENT)

Injection #	0.01	0.02	0.04	0.10	1.0	2.0
1	45386	84737	166097	448497	4395380	9339150
2	44241	84300	170832	441299	4590800	9484900
3	43822	83835	164160	443719	4593200	9557580
4	44062	84381	164445	444842	4642350	9677060
5	44006	83012	168398	442564	4646430	9766240
6	42724	81957	173002	443975	4646260	
X=	44040.1	83703.6	167872	444149	4585767	9564986
SD=	852.5	1042.2	3589.8	2459.1	96839.3	166233
CV=	0.0194	0.0125	0.0213	0.0055	0.0211	0.0174
CV=0.017						

Appendix E to Subpart C—Respirator Fit Tests

Procedures

This appendix contains the procedures for properly fitting a respirator to employees who may be exposed to benzene and includes the Initial Fit Tests (IFT), the Qualitative Fit Tests (QLFT), and the Quantitative Fit Test (QNFT).

Note that respirators (negative pressure or positive pressure) must not be worn when conditions prevent a tight seal between the faceplate and the skin or the proper functioning of the inhalation or exhalation valves. In order for a respirator to protect the wearer, the facepiece must make a proper seal against the wearer's face. Several factors can negatively affect the respirator to face seal and reduce the level of protection afforded by the respirator. Among these are facial shape, temple pieces of eyeglasses, facial abnormalities (e.g., scars and indentations) absence of dentures, hair style or length of hair, specific skin conditions, and facial hair. Therefore, nothing can come between or otherwise interfere with the sealing surface of the respirator and the face or interfere with the function of the inhalation or exhalation valves.

I. Initial Fit Tests (IFT)

(a) The test subject must be allowed to select the most comfortable respirator from a selection of respirators of various sizes. The selection must include at least three sizes of elastomeric facepieces for the type of respirator that is to be tested (i.e., three sizes of half mask or three sizes of full facepiece).

(b) Before the selection process, the test subject must be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension, and how to determine a comfortable fit. A mirror must be available to assist the subject in evaluating the fit and positioning the respirator. This instruction is only a preliminary review and must not constitute the subject's formal training on respirator use.

(c) The test subject must be informed that he or she is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape and, if fitted and used properly, should provide adequate protection.

(d) The test subject must be instructed to hold each facepiece up to the face and eliminate those facepieces which obviously do not give a comfortable fit.

(e) The more comfortable facepieces must be noted and the most comfortable mask donned and worn at least five minutes to assess comfort. Assistance in assessing comfort may be given by discussing the points in section I(f) of this appendix. If the test subject is not familiar with using a particular respirator, the test subject must be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

(f) Assessment of comfort must include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

(1) Position of the mask on the nose.

(2) Room for eye protection.

(3) Room to talk.

(4) Position of mask on face and cheeks.

(g) The following criteria must be used to help determine the adequacy of the respirator fit:

(1) Chin properly placed.

(2) Adequate strap tension, not overly tightened.

(3) Fit across nose bridge.

(4) Respirator of proper size to span distance from nose to chin.

(5) Tendency of respirator to slip.

(6) Self-observation in mirror to evaluate fit and respirator position.

(h) The following negative and positive pressure fit tests must be conducted. Before conducting a negative or positive pressure fit test, the subject must be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths Another facepiece must be selected and retested if the test subject fails the fit check tests.

(1). *Positive pressure fit test.* The exhalation valve must be closed off and the subject must exhale gently onto the facepiece. The face fit is considered satisfactory if a slight positive pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation valve cover before closing off the exhalation valve and then carefully replacing it after the test.

(2). *Negative pressure fit test.* The inlet opening of the canister or cartridge(s) must be closed off by covering with the palm of the hand(s) or by replacing the filter seal(s). The subject must inhale gently so that the facepiece collapses slightly and hold his or her breath for ten seconds. If the facepiece remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

(i) The test must not be conducted if the subject has any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, or long sideburns which cross the respirator sealing surface. Any type of apparel, such as a skull cap or the temple bars of eye glasses, which projects under the facepiece or

otherwise interferes with a satisfactory fit must be altered or removed.

(j) If the test subject exhibits difficulty in breathing during the tests, the subject must be referred to a physician trained in respiratory disease or pulmonary medicine to determine whether the test subject can wear a respirator while performing his or her duties.

(k) The test subject must be given the opportunity to wear the successfully fitted respirator for a period of two weeks. If at any time during this period the respirator becomes uncomfortable, the test subject must be given the opportunity to select a different facepiece and to be retested.

(l) Exercise regimen. Before beginning the fit test, the test subject must be given a description of the fit test and of the test subject's responsibilities during the test procedure. The description of the process must include a description of the test exercises that the subject must perform. The respirator to be tested must be worn for at least five minutes before the start of the fit test.

(m) Test Exercises. The test subject must perform the following exercises in the test environment:

(1) Normal breathing. In a normal standing position, without talking, the subject must breathe normally.

(2) Deep breathing. In a normal standing position, the subject must breathe slowly and deeply, taking caution so as to not hyperventilate.

(3) Turning head side to side. Standing in place, the subject must slowly turn his or her head from side to side between the extreme positions on each side. The subject must hold his or her head at each extreme momentarily and inhale.

(4) Moving head up and down. Standing in place, the subject must slowly move his or her head up and down. The subject must be instructed to inhale in the up position (i.e., when looking toward the ceiling).

(5) Talking. The subject must talk slowly and loudly enough so as to be heard clearly by the test conductor. The subject must count backward from 100, recite a memorized poem or song, or read the following passage:

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

(6) Grimace. The test subject must grimace by smiling or frowning.

(7) Bending over. The test subject must bend at the waist as if to touch the toes or, for test environments such as shroud type QNFT units which prohibit bending at the waist, the subject must jog in place.

(8) Normal breathing. Same as exercise 1.

Each test exercise must be performed for one minute, except for the grimace exercise which must be performed for 15 seconds. The test subject must be questioned by the test conductor regarding the comfort of the respirator upon completion of test exercises. If it has become uncomfortable, another respirator must be tried and the subject retested.

(n) The employer shall certify that a successful fit test has been administered to the test subject. The certification must include the following information:

(1) Name of employee.

(2) Type, brand, and size of respirator.

(3) Date of test.

Where QNFT is used, the fit factor, strip chart, or other recording of the results of the test must be retained with the certification. The certification must be maintained until the next fit test is administered.

II. Qualitative Fit Tests (QLFT)

(a) *General.* (1) The employer shall designate specific individuals to administer the respirator qualitative fit test program. The employer may contract for these services.

(2) The employer shall ensure that persons administering QLFT are able to properly prepare test solutions, calibrate equipment, perform tests, recognize invalid tests, and determine whether the test equipment is in proper working order.

(3) The employer shall ensure that QLFT equipment is kept clean and maintained so as to operate at the parameters for which it was designed.

(b) *Isoamyl acetate tests.* (1) Odor threshold screening test. The odor threshold screening test, performed without wearing a respirator, is intended to determine if the test subject can detect the odor of isoamyl acetate.

(i) Three one-liter glass jars with metal lids must be used.

(ii) Odor free water (e.g. distilled or spring water) at approximately 25 degrees C must be used for the solutions.

(iii) An isoamyl acetate (IAA) (also known at isopentyl acetate) stock solution must be prepared by adding one cc of pure IAA to 800 cc of odor free water in a one liter jar and by shaking the jar for 30 seconds. A new solution must be prepared at least weekly.

(iv) The screening test must be conducted in a room separate from the room used for actual fit testing. The two rooms must be well ventilated but not connected to the same recirculating ventilation system.

(v) An odor test solution must be prepared in a second one-liter jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. The solution must be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution must be used for only one day.

(vi) A test blank must be prepared in a third one-liter jar by adding 500 cc of odor free water.

(vii) The odor test jar and the test blank jar must be labeled "1" and "2" for identification. The labels must be placed on the jar lids so that the labels can be periodically peeled off dried, and switched to maintain the integrity of the test.

(viii) The following instruction must be typed on a card and placed on a table in front of the odor test jar and the test blank jar:

The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil.

(ix) The mixtures in the jars used in the IAA odor threshold screening must be prepared in an area separate from the test area, in order to prevent olfactory fatigue in the test subject.

(x) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test must not be performed.

(xi) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

(2) Isoamyl acetate fit test. (i) The fit test chamber must be a clear 55-gallon drum liner or similar device suspended inverted over a two foot diameter frame so that the top of the chamber is about six inches above the test subject's head. The inside top center of the chamber must have a small hook attached.

(ii) Each respirator used for the fitting and fit testing must be equipped with organic vapor cartridges or offer protection against organic vapors. The

cartridges or masks must be changed at least weekly.

(iii) After selecting, donning, and properly adjusting a respirator, the test subject must wear the respirator to the fit testing room. This room must be separate from the room used for odor threshold screening and respirator selection and must be well ventilated by an exhaust fan, lab hood, or other device to prevent general room contamination.

(iv) A copy of the test exercises and any prepared text from which the subject is to read must be taped to the inside of the test chamber.

(v) Upon entering the test chamber, the test subject must be given a six inch by five inch piece of paper towel or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject must hang the wet towel on the hook at the top of the chamber.

(vi) Two minutes must be allowed for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk with the test subject, to explain the fit test, the importance of the subject's cooperation, and the purpose for the head exercises, or to demonstrate some of the exercises.

(vii) The test subject must be instructed to perform the exercises described in section I(n) of this appendix. If at any time during the test the subject detects the banana like odor of IAA, the test is failed. The subject must be removed quickly from the test chamber and the test area to avoid olfactory fatigue.

(viii) If the test is failed, the subject must return to the selection room, remove the respirator, repeat the odor sensitivity test, select and don another respirator, return to the test chamber, and again take the IAA fit test. The process must continue until a respirator that fits well is found. If the odor sensitivity test is failed, the subject must wait at least five minutes before retesting to allow odor sensitivity to return.

(ix) When a respirator is found that passes the test, the subject must demonstrate the efficiency of the respirator by breaking the face seal and taking a breath before exiting the chamber. If the subject cannot detect the odor of IAA, the test is deemed inconclusive and must be rerun.

(x) When the test subject leaves the chamber, the subject must remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towel must be kept in a self-sealing bag to avoid significant IAA concentration build-up in the test chamber for subsequent tests.

(c) *Saccharin solution aerosol test.* The saccharin solution aerosol test is an alternative qualitative test. Although it is the only validated test currently available for use with particulate disposable dust respirators not equipped with high-efficiency filters, it may also be used for testing other respirators. The entire screening and testing procedure must be explained to the test subject before the conduct of the saccharin test threshold screening test.

(1) Saccharin taste threshold screening test. The test, performed without wearing a respirator, is intended to determine whether the test subject can detect the taste of saccharin.

(i) The subject must wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear. If the enclosure is also used for the saccharin solution aerosol fit test in compliance with section II(c)(2) of this appendix, the enclosure must allow free movements of the head when a respirator is worn. An enclosure substantially similar to the Minnesota, Mining and Manufacturing (3M) hood assembly, parts No. FT 14 and No. FT 15 combined, is adequate.

(ii) The test enclosure must have a ¾ inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(iii) The test subject must don the test enclosure. Throughout the threshold screening test, the test subject must breathe with mouth wide open and tongue extended.

(iv) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer, the test conductor must spray the threshold check solution in accordance with II(c)(1)(v) of this appendix into the enclosure. The nebulizer must be clearly marked to distinguish it from the fit test solution nebulizer.

(v) The threshold check solution consists of 0.83 grams of sodium saccharin USP in one cc of warm water. It may be prepared by putting one cc of the fit test solution (see section II(c)(2)(iv) of this appendix) in 100 cc of distilled water.

(vi) To produce the aerosol, the nebulizer bulb must be firmly squeezed so that it collapses completely. Then, the bulb must be released and allowed to expand fully.

(vii) The bulb must be squeezed rapidly ten times and the test subject must be asked whether he or she tastes the saccharin.

(viii) If the first response is negative, the ten rapid squeezes must be repeated and the test subject is again asked whether he or she tastes the saccharin.

(ix) If the second response is negative, ten more squeezes are repeated rapidly and the test subject again asked whether the saccharin is tasted.

(x) The test conductor must take note of the number of squeezes required to solicit a taste response.

(xi) If the saccharin is not tasted after 30 squeezes, the test subject may not perform the saccharin fit test.

(xii) If a taste response is elicited, the test subject must be asked to take note of the taste for reference in the fit test.

(xiii) Correct use of the nebulizer means that approximately one cc of liquid is used at a time in the nebulizer body.

(xiv) The nebulizer must be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four-hours.

(2) Saccharin solution aerosol fit test. (i) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(ii) The fit test must be conducted with the same type of enclosure used for the saccharin taste threshold screening test in accordance with section II(c)(1) of this appendix.

(iii) The test subject must don the enclosure while wearing the respirator selected in the saccharin taste threshold screening test. The respirator must be properly adjusted and equipped with a particulate filter(s).

(iv) A second DeVilbiss Model 40 Inhalation Medication Nebulizer must be used to spray the fit test solution into the enclosure. This nebulizer must be clearly marked to distinguish it from the nebulizer used for the threshold check solution in accordance with section II(c)(1)(iv) of this appendix.

(v) The fit test solution must be prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(vi) The test subject must breathe with mouth wide open and tongue extended.

(vii) The nebulizer must be inserted into the hole in the front of the enclosure and the fit test solution must be sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test in accordance with sections II(c)(1)(vi) through II(c)(1)(xi) of this appendix.

(viii) After generating the aerosol, the test subject must be instructed to perform the exercises in section I(n) of this appendix.

(ix) Every 30 seconds, the aerosol concentration must be replenished using one half the number of squeezes used initially.

(x) The test subject must indicate to the test conductor if, at any time during the fit test, the taste of saccharin is detected.

(xi) If the taste of saccharin is detected, the fit must be deemed unsatisfactory and a different respirator must be tried.

(d) *Irritant fume test.* The irritant fume test is an alternative qualitative fit test.

(1) The respirator to be tested must be equipped with high-efficiency particulate air (HEPA) filters.

(2) The test subject must be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with the smoke's characteristic odor.

(3) Both ends of a ventilation smoke tube containing stannic oxychloride, such as the Marine Safety Appliance part No. 5645 or equivalent, must be broken. One end of the smoke tube must be attached to a low flow air pump set to deliver 200 milliliters per minute.

(4) The test subject must be advised that the smoke may be irritating to the eyes and that the subject must keep his or her eyes closed while the test is performed.

(5) The test conductor must direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. The test must be started with the smoke tube at least 12 inches from the facepiece, moved gradually to within one inch, and moved around the whole perimeter of the mask

(6) Each test subject who passes the smoke test without evidence of a response must be given a sensitivity check of the smoke from the same tube once the respirator has been removed. This check is necessary to determine whether the test subject reacts to the smoke. Failure to evoke a response voids the fit test.

(7) The fit test must be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the irritant smoke.

III. Quantitative Fit Tests (ONFT)

(a) *General.* (1) The employer shall designate specific individuals to administer the respirator quantitative fit test program.

(2) The employer shall ensure that persons administering QNFT are able to properly calibrate equipment, perform tests, recognize invalid tests, calculate fit factors, and determine whether the test equipment is in proper working order.

(3) The employer shall ensure that QNFT equipment is kept clean and maintained so as to operate at the parameters for which it was designed.

(b) *Definitions.* (1) *Quantitative fit test* means a test which is performed in a test chamber and in which the normal air-purifying element of the respirator is replaced with a high-efficiency particulate air (HEPA) filter, in the case of particulate QNFT aerosols, or with a sorbent offering contaminant penetration protection equivalent to high-efficiency filters, if the QNFT test agent is a gas or vapor.

(2) *Challenge agent* means the aerosol, gas, or vapor introduced into a test chamber so that its concentration inside and outside of the respirator may be measured.

(3) *Test subject* means the person wearing the respirator for quantitative fit testing.

(4) *Normal standing position* means an erect and straight stance with arms down along the sides and eyes looking straight ahead.

(5) *Maximum peak penetration method* means the method of determining test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise is taken to be representative of average penetration into the respirator for that exercise.

(6) *Average peak penetration method* means the method of determining test agent penetration into the respirator by using a strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph, or by computer integration, for each exercise except the grimace exercise. Integrators or computers which calculate the actual test agent penetration into the respirator for each exercise also may be used in accordance with this method.

(7) *Fit factor* means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

(c) *Apparatus.* (1) Instrumentation. Aerosol generation, dilution, and measurement systems using corn oil or sodium chloride as test aerosols must be used for quantitative fit testing.

(2) Test chamber. The test chamber must be large enough to permit all test subjects to perform freely all required exercises without disturbing the challenge agent concentration or the measurement apparatus. The test chamber must be equipped and constructed so that the challenge agent is effectively isolated from the ambient air, yet is uniform in concentration throughout the chamber.

(3) When testing air-purifying respirators, the normal filter or cartridge element must be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

(4) The sampling instrument must be selected so that a strip chart record may be made of the test showing the rise and fall of the challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers which integrate the amount of test agent penetration leakage into the respirator for each exercise may be used if a record of the readings is made.

(5) The combination of substitute air-purifying elements, challenge agent, and challenge agent concentration in the test chamber must be such that the test subject is not exposed to a concentration of the challenge agent in excess of the established exposure limit for the challenge agent at any time during the testing process.

(6) The sampling port on the test specimen respirator must be placed and constructed so that no leakage occurs around the port (e.g. where the respirator is probed), so that a free air flow is allowed into the sampling line at all times, and so that there is no interference with the fit or performance of the respirator.

(7) The test chamber and test set up must permit the person administering the test to observe the test subject inside the chamber during the test.

(8) The equipment generating the challenge atmosphere must maintain a constant concentration of challenge agent inside the test chamber to within a ten percent variation for the duration of the test.

(9) The time lag (i.e. the interval between an event and the recording of the event on the strip chart, computer, or integrator) must be kept to a minimum. There must be a clear association between the occurrence of an event inside the test chamber and the recording of that event.

(10) The sampling line tubing for the test chamber atmosphere and for the respirator sampling port must be of equal diameter and of the same material. The length of the two lines must be equal.

(11) The exhaust flow from the test chamber must pass through a high-efficiency filter before release.

(12) When sodium chloride aerosol is used, the relative humidity inside the test chamber must not exceed 50 percent.

(13) The limitations of instrument detection must be taken into account when determining the fit factor.

(14) Test respirators must be maintained in proper working order and inspected for deficiencies, such as cracks, missing valves, and gaskets.

(d) *Procedural requirements.* (1) When performing the initial positive or negative pressure test, the sampling line must be crimped closed in order to avoid air pressure leakage during either of these tests.

(2) In order to reduce the amount of QNFT time, an abbreviated screening isoamyl acetate test or irritant fume test may be used in order to quickly identify poor fitting respirators which passed the positive or negative pressure test. When performing a screening isoamyl acetate test, combination high-efficiency organic vapor cartridges or canisters must be used.

(3) A reasonably stable challenge agent concentration must be measured in the test chamber before testing. For canopy or shower curtain type of test units, the determination of the challenge agent stability may be established after the test subject has entered the test environment.

(4) Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator must be measured to ensure that the peak penetration does not exceed five percent for a half mask or one percent for a full facepiece respirator.

(5) A stable challenge concentration must be obtained before the actual start of testing.

(6) Respirator restraining straps must not be overtightened for testing. The straps must be adjusted by the wearer without assistance from other persons to give a fit reasonably comfortable for normal use.

(7) After obtaining a stable challenge concentration, the test subject must be instructed to perform the exercises described in section I(n) of this appendix. The test must be terminated whenever any single peak penetration exceeds five percent for half masks and one percent for full facepiece respirators. The test subject must be refitted and retested. If two of the three required tests are terminated, the fit is deemed inadequate.

(8) In order to successfully complete a QNFT, three successful fit tests must be conducted. The results of each of the three independent fit tests must exceed the minimum fit factor needed for the class of respirator (e.g., half mask respirator, full facepiece respirator).

(9) Calculation of fit factors. (i) The fit factor must be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration inside the respirator.

(ii) The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

(iii) The concentration of the challenge agent inside the respirator must be determined by one of the following methods:

(A) Average peak concentration.

(B) Maximum peak concentration.

(C) Integration by calculation of the area under the individual peak for each exercise. This includes computerized integration.

(10) Interpretation of test results. The fit factor established by the quantitative fit testing must be the lowest of the three fit factor values calculated from the three required fit tests.

(11) The test subject must not be permitted to wear a half mask or a full facepiece respirator unless a minimum fit factor equivalent to at least ten times the hazardous exposure level is obtained.

(12) Filters used for quantitative fit testing must be replaced at least weekly, whenever increased breathing resistance is encountered, or whenever the test agent has altered the integrity of the filter media. When used, organic vapor cartridges and canisters must be replaced daily or whenever there is an indication of a breakthrough by a test agent.

Appendix F to Subpart C—Sample Worker Certification Form

Benzene Worker's Certification

I, _____(Name of worker), certify in accordance with 46 CFR 197.530—

(1) That I have had, within the previous twelve months, at least one medical examination in compliance with 46 CFR 197.560 or 29 CFR 1910.1028;

(2) That the physician conducting the latest medical examination in compliance with paragraph (1) of this certification did not recommend that I be excluded from areas where personal exposure may exceed the action level as defined in 46 CFR 197.505;

(3) That all respirators and personal protective clothing and equipment that I will use while on the vessel meet the requirements of 46 CFR 197.550(b) and 197.555(c) or of 29 CFR 1910.1028; and

(4) That all respirators that I will use while on the vessel have been fitted and fit tested in accordance with 46 CFR 197.550 (c) and (d) or with 29 CFR 1910.1028.

_____

(signature of worker)

_____

(printed name of worker)

_____

(date signed by worker)

Dated: July 10, 1991.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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Thursday
October 17, 1991

Part III

Department of Transportation

Research and Special Programs Administration

Chemical Waste Transportation Institute; Appeal of Non-Preemption Determination Concerning Regulations of the State of Alabama; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Appeal of Inconsistency Ruling No. IR-32; Docket No. IRA-46]

Chemical Waste Transportation Institute Appeal of Non-Preemption Determination Concerning Regulations of the State of Alabama

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public Notice and Invitation to Comment.

SUMMARY: The Chemical Waste Transportation Institute has appealed to the Administrator of the Research and Special Programs Administration (RSPA) the August 28, 1990 decision of the Associate Administrator for Hazardous Materials Safety (formerly Director, Office of Hazardous Materials Transportation) (IR-32; 55 FR 36736-36748, September 6, 1990). The Associate Administrator's decision found certain provisions of the Montevallo, Alabama City Code consistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR), and other provisions inconsistent with the HMTA and the HMR and thus preempted under section 112(a) of the HMTA. Comments are invited on the merits of the appeal.

DATES: Comments received on or before December 2, 1991, and rebuttal comments received on or before January 15, 1992, will be considered before the Administrator issues an administrative ruling. Rebuttal comments may discuss only those issues raised during the initial comment period and may not discuss new issues.

ADDRESSES: The appeal and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 Seventh Street, SW., Washington DC 20590-0001. Comments and rebuttal comments must be submitted to the Dockets Unit at the above address, and should include the Docket Number IRA-46. Three copies are requested. A copy of each comment and rebuttal comment also must be sent to John H. Turner, Esq., Association Counsel, National Solid Wastes Management Association, 1730 Rhode Island Ave., N.W., Suite 1000, Washington, DC 20036 and Steven R. Sears, Esq., City Attorney, 11 South Main St., P.O. Box 4, Montevallo, AL 35115-0004. Each comment and rebuttal comment submitted to the Dockets Unit must contain a certification that a copy has been sent to each person on the service list. (The following format is suggested: "I certify that copies of this comment have been sent to Messrs. Turner and Sears at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Sherri Pappas, Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590-0001, telephone number 202-366-4400.

SUPPLEMENTARY INFORMATION:

1. Background

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101-615, amended the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, including some of the HMTA's preemption provisions. The Research and Special Programs Administration (RSPA) has amended its regulations to conform to these statutory changes. 56 FR 8616 (Feb. 28, 1991); 56 FR 15510 (Apr. 17, 1991).

Section 105(a)(4) of the HMTA (49 App. U.S.C. 1811(a)(4)) preempts "any law, regulation, order, ruling, provision, or other requirements of a State or political subdivision thereof or an Indian tribe" which concerns a "covered subject" and "is not substantively the same" as any provision of the HMTA or any regulation issued under the HMTA. Section 105(a)(4) defines a "covered subject" as:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

RSPA has issued a notice of proposed rulemaking proposing a definition for the term "substantively the same." 56 FR 36992 (Aug. 1, 1991). However, no "covered subject" is at issue in this matter.

The preemption standards for hazardous materials highway routing requirements are found in section 105(b)(4) of the HMTA (49 App. U.S.C. 1804(b)(4)). The Secretary of Transportation has delegated responsibility for those highway routing issues, including the issuance of preemption determinations, to the Federal Highway Administration. 56 FR 31343 (July 10, 1991). No routing issues are involved in this matter.

Prior to passage of the HMTUSA, RSPA, by regulation, set forth two criteria it considered in determining whether a non-Federal requirement was inconsistent with the HMTA or the HMR: the "dual compliance" and "obstacle" standards. Congress codified these standards in section 112(a) of the HMTA (49 App. U.S.C. 1811(a)), which provides that any requirement of a State, political subdivision, or Indian tribe is preempted if:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of (the HMTA) or of a regulation issued under (the HMTA) is not possible, (or)

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of (the HMTA) or regulations issued under (the HMTA) * * *.

The previous criteria were used by RSPA in issuing its advisory inconsistency rulings, including the ruling at issue here. In section 112(c) of the HMTA (49 App. U.S.C. 1811(c)), Congress provided that the new statutory standards are to be used in making legally binding preemption determinations. Although RSPA will use those statutory standards in determining if the Montevallo City Code provisions that are the subject of this appeal are preempted by the HMTA, the determination will not be binding. Specifically, RSPA's Administrator will issue a decision on appeal of an advisory inconsistency ruling—not a decision on appeal of a legally binding preemption determination.

2. The Inconsistency Ruling

On January 3, 1989, the Chemical Waste Transportation Council (now the Chemical Waste Transportation Institute) filed an application for an inconsistency ruling requesting a finding that sections 7-40 through 7-50 of the City of Montevallo, Alabama Code concerning the transportation of hazardous wastes were inconsistent with the HMTA and the HMR. On August 28, 1990, the Associate Administrator for Hazardous Materials Safety (formerly Director, Office of Hazardous Materials Transportation) issued Inconsistency Ruling 32, which

was published at 55 FR 36736 on September 6, 1990.

The Associate Administrator determined that City of Montevallo, Alabama Code sections 7–41, 7–42, 7–45, 7–46(a), 7–46(b), 7– 45(d) as it relates to radioactive materials, 7–47(a), 7–48(b) as it relates to irradiated reactor fuel, 7–48(c) and 7–49 as it relates to storage of hazardous waste incidental to transportation, were inconsistent with the HMTA and the HMR and thus preempted under section 112(a) of the HMTA as they apply to the transportation of hazardous materials, including the loading, unloading and storage incidental to that transportation.

The Associate Administrator found that other provisions of the Montevallo, Alabama City Code were consistent with the HMTA and the HMR:

(1) The speed limit restrictions in section 7–43;

(2) The separation distance requirement in section 7–44;

(3) The headlight requirement in section 7–46(c);

(4) The citizens band radio requirement in 7–46(d) except as it relates to radioactive materials;

(5) The placarding requirements in section 7–47(b);

(6) The requirement in section 7–48(a) that drivers transporting hazardous waste carry a hazardous waste manifest; and

(7) The accident reporting requirement in section 7–48(b) except as it relates to irradiated reactor fuel.

3. The Appeal of IR–32

By letter dated September 27, 1990, the Chemical Waste Transportation Institute (CWTI), a component of the National Solid Wastes Management Association, appealed the following two findings of non-preemption in the Associate Administrator's decision:

(1) 7–44, the 150 foot separation distance requirement;

(2) 7–46(d), the requirement that non-radioactive hazardous waste-carrying vehicles be equipped with citizens band radios;

CWTI asks that the Administrator find these sections inconsistent with the HMTA and thus preempted. The entire text of CWTI's appeal has been included as Appendix A to this Notice.

4. Public Comment

Comments should address the two provisions that CWTI contends are inconsistent with the HMTA and the HMR. Persons should address the "dual compliance" and "obstacle" tests described in the Background section of this notice. Persons intending to comment on the appeal should review the standards and procedures governing the Department's processing of applications for preemption determinations found at 49 CFR 107.201–107.211 and the docket on this matter in RSPA's Dockets Unit.

Issued in Washington, DC, on October 9, 1991.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Partial Appeal of Petitioner, Chemical Waste Transportation Institute, of Inconsistency Ruling No. IR–32, Docket No. IRA–46

September 27, 1990.

I. Introduction

The Chemical Waste Transportation Institute ("CWTI"),[1] a component of the National Solid Wastes Management Association ("NSWMA") hereby appeals in part the August 28, 1990 decision of the Director, Office of Hazardous Material Transportation (Inconsistency Ruling No. 32). The CWTI requests that the Administrator of the Research and Special Programs Administration ("RSPA") find that a vehicle separation distance requirement, contained in section 7–44 of the Montevallo, Alabama Code, and a citizens band radio equipment requirement, found in section 7–46(d) of the Code, are inconsistent with and thus preempted by Section 112(a) of the Hazardous Materials Transportation Act ("HMTA").

In the Inconsistency Ruling, see 55 FR 36736 (Sept. 6, 1990), the Director appropriately noted that the HMTA dramatically altered the traditional roles of political authorities with regard to hazardous materials transportation:

> In the HMTA's Declaration of Policy (Section 102, 49 U.S.C. App. 1801) and in the Senate Commerce Committee report on section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section112(a) in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation (S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974)). Under the HMTA, DOT has the authority to promulgate uniform national standards. While the HMTA did not totally preclude State or local action in this area, Congress intended, to the extent possible, to make such State or local action unnecessary. The comprehensiveness of the (Hazardous Materials Regulations ("HMR")), issued to implement the HMTA, severely restricts the scope of historically permissible State or local activity.

[1] Formerly the Chemical Waste Transportation Council.

Id. at 36,737.

Applying these principles to the numerous requirements set forth in the Montevallo Code relating to the transportation of hazardous waste, the Director found several of the provisions to be inconsistent with the HMTA. The CWTI submits that the Director erred, however, in finding two local requirements—those imposing a 150-foot separation distance for hazardous waste-carrying vehicles and requiring that such vehicles be equipped with citizens band radios tuned to Channel 9—to be consistent with the Act and its implementing regulations.

II. The Separation Distance Requirement Is Inconsistent With, and Accordingly Preempted by, the HMTA

Section 7–44 of the Montevallo Code requires that:

> No hazardous waste-carrying vehice shall follow within 150 feet of any other vehicle when within the City limits, *Provided*, That this section shall not apply to vehicles following state, county or city police vehicles.

The Director determined that the requirement is consistent with the HMTA, reasoning that "the HMR do not specify a separation distance for motor vehicles carrying hazardous materials" and that "no basis (exists) in this record for concluding that (the requirement) is inconsistent with the HMR." For the reasons that follow, the Administrator should find the separation distance requirement to be an impermissible obstacle to compliance with the terms and goals of the HMTA.

The absence of a separation distance provision in the federal Hazardous Materials Regulations does support a finding that the local ordinance satisfies the "dual compliance" test applied to preemption/inconsistency examinations under the HMTA. It is, clearly, possible to comply both with the HMR and the local requirement. The RSPA has, however, in light of the rulings of the United States Supreme Court, consistently acknowledged the existence of a second criterion—the "obstacle test"—for determining whether a state or local requirement is inconsistent with, and thus preempted by, the HMTA. See 49 CFR 107.209(c)(2) (requiring that the test be applied under the Act). The obstacle test, like the dual compliance analysis, is "based upon, and supported by, United States Supreme Court decisions on preemption." 55 FR at 36737. As the Director noted:

> Application of this second criterion (the obstacle test) requires an analysis of the non-Federal requirement in light of the

requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through RSPA's regulatory program.

Id.

While Congress did not expressly prohibit State or local regulation of the transportation of hazardous materials or unequivocally declare DOT's authority to be exclusive, a determination that non-federal measures are inconsistent may nevertheless be made through application of the obstacle test. The key factors in such a finding of preemption are the following:

(1) The aim and intent of Congress as revealed by the statute and its legislative history;

(2) The pervasiveness of the federal regulatory scheme as reflected in the legislation and as put into effect by the Department;

(3) The nature of the subject matter regulated and whether it demands exclusive federal regulation or uniformity in order to achieve national interests; and

(4) Whether the local requirement interferes with "the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U.S. 52, 54 (1941); *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

Although no Federal requirement addresses separation distances for motor vehicles carrying hazardous materials, an examination of the four factors enumerated above clearly justifies a finding that the unique local requirement is inconsistent. First, both the HMTA and its legislative history make clear that uniform, national safety standards were Congress' goal. The explicit purpose of the HMTA was "to improve the regulatory enforcement authority of the Secretary of Transportation to Protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 U.S.C. 1801; *id.* § 1804(a) (DOT to issue regulations governing "any safety aspect" of the transportation of hazardous materials). Congress emphasized that a proliferation of disparate local rules for transporters engaged in interstate commerce would hinder achievement of the goals of increased safety and regulatory uniformity. See S. Rep. No. 1192, *supra*. at 37; *Kappelmann* v. *Delta Air Lines*, 539 F.2d 165, 169–70 (D.C. Cir. 1976) (need for national uniformity).

Second, the pervasiveness of the federal regulatory scheme is reflected in the scope and hreadth of the Act. In *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D.R.I. 1982), aff'd, 698 F.2d 559 (1st Cir. 1983), the First Circuit Court of Appeals held that while a local safety regulation did not directly conflict with the terms of the HMTA, it was nonetheless inconsistent with "congressional purposes to secure a general pattern of uniform, national regulations, and to preclude multiplicity of State and local regulations and the potential for varying as well as conflicting regulations concerning hazardous materials transportation." The legislation issued a mandate to DOT to "eliminate the safety risks associated with every mode and aspect of transportation. Thus, DOT now regulates everything from the integrity of shipping boxes to the crash resistance of tank trucks, from the training of vehicle operators to the routing of radioactive cargos." Comment, Hazardous Waste at the Crossroads: Federal and State Transit Rules Confront Legal Roadblocks, 12 ELR 10075, 10078 (1982). Congress recognized that safety concerns were to be specifically addressed in Federal regulations, and expected that the DOT would promulgate rules affecting every aspect of the transportation of hazardous materials. Accordingly, the Department in previous inconsistency rulings has correctly noted that "the absence of a federal regulation addressing the same subject as a challenged state requirement is not determinative of the requirement's consistency." Inconsistency Ruling 8, 49 FR 46637 (Nov. 27, 1984).

Third, in view of the intercity and interstate framework within which transportation companies operate, consistent safety requirements are necessary in order to "achieve the uniformity vital to national interests." *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963). Finally, locally-established distance separation requirements which vary from community to community and are based exclusively upon local interests clearly operate as obstacles to the accomplishment of the full purposes and objectives of Congress. Congress authorized DOT to pervasively regulate the field and to issue regulations governing every aspect of the transportation of hazardous materials. It did not envision the frustration of a national policy of uniformity by the promotion of disparate local requirements concerning matters not yet specifically addressed in federal regulations implementing the Act.

The Montevallo requirement cannot stand. If states or localities were to create a patchwork of different separation distance regulations—ostensibly in order to promote safety—the congressional purposes would be frustrated and transport safety would, in fact, be hampered. An interpretation of the HMTA as preempting only local regulations that actually conflict with the HMR would render the Act's preemption provisions and procedures essentially meaningless.

Accordingly, and in view of the Federal interests discussed above, the Department has upheld only those occasional community-specific measures that can be justified as legitimate and necessary controls. See, e.g., Inconsistency Ruling No. 3, *infra*. Consistent with Congress' insistence that local regulation of hazardous waste transportation be, to the extent possible, made unnecessary, Preamble to Inconsistency Rulings IR–7 through IR–15, 49 FR 46632, 46633 (1984), the burden of asserting and demonstrating an adequate overall safety justification should squarely be placed upon the locality. Montevallo's only formally stated reason for adoption of the requirement was to facilitate transportation safety in order to reduce the "possibility" of a "spill" of hazardous materials. The 150-foot distance requirement applies at all times of day, in all weather and traffic conditions, and with regard to all vehicles except those operated by the State of Alabama, Shelby County, or Montevallo police. Yet a vehicle separation requirement that truly promotes the goal of traffic safety would undoubtedly recognize, as a number of studies have concluded,[2] that what constitutes a safe stopping distance depends upon factors such as speed, weight of the load carried by the vehicle, traffic, road and weather conditions, and other criteria. Moreover, if 150 feet is indeed a minimum safe stopping distance, it is both illogical and unjustified to exclude state, county or city police vehicles and to apply the provision only to hazardous waste transport vehicles. See *Southern Pacific Transportation Co.* v. *Public Service Commission of Nevada*, No. 88–15541 (9th Cir. July 18, 1990) (finding Nevada regulations inconsistent with the HMTA; court noted that "the Nevada regulations only apply to some of the hazardous materials covered by the HMTA and HMR and not to others").

In Inconsistency Ruling 3, the RSPA questioned "the advisability of encouraging the driver to constantly

[2] See, e.g., Radlinski, Braking Performance of Heavy U.S. Vehicles, SAE Technical Paper Series No. 870492, 1987.

direct his attention away from the proximity of his vehicle." 46 FR 18918, 18923 (Mar. 26, 1981). In order to conform with the Montevallo provision, a driver of a hazardous waste-carrying vehicle must in practice do more than constantly avert his attention from his vehicle in order to estimate distance. He must also attempt to comply with an inflexible separation requirement wholly detached from any local or site-specific condition he may encounter. In fact, the driver is forced—particularly in periods of heavy traffic in which vehicles are frequently entering and exiting from the highway—to make abrupt changes in speed and take other necessary actions which could contribute to an accident. At best, the requirement is burdensome and unfounded. At worst, it is an impediment to the safe transportation of hazardous materials.[3]

Finally, if uniform separation distance requirements are consistent with the HMTA, such provisions can hardly promote the national goal of safe transportation if reasonable notice is not afforded vehicle operators. If the Administrator finds the Montevallo provision to be consistent with the HMTA, the CWTI urges that the determination be stipulated on the provision of reasonable notification of the requirement to vehicle operators. See Inconsistency Ruling at 55 FR 36745 ("the 'headlights on' requirement is a valid local requirement as long as (1) reasonable notice thereof is given to vehicle operators * * *").

III. The Local Requirement That Hazardous Waste-Carrying Vehicles Be Equipped With Citizens Band Radios is Inconsistent With, and Thus Preempted by, the HMTA

The CWTI believes it is essential that local emergency response authorities have access to information that will help them identify and properly respond to transportation accidents involving hazardous materials. The development of a national system of hazardous materials response teams and the successful operation of emergency information services depends upon the recognition of uniform methods of emergency notification and the participation of local authorities. This case, however, presents a local requirement that seeks to advance the laudable aim of local notification through unlawful means. Section 7–46(d) of the Montevallo Code requires that all vehicles carrying hazardous waste within the City limits be equipped with citizens band radios. The Director determined that the provision is, in the case of non-radioactive hazardous materials transportation, consistent with the HMTA. He concluded that "except for radioactive materials transportation, the HMR does not impose any Federal requirement with regard to radios." The Ruling acknowledged that "the record contains no information concerning how this local requirement enhances safety." 55 FR at 36745.

As noted above, the absence of a specific federal regulation addressing the use of citizens band radios in the case of non-radioactive hazardous materials transportation should not end the preemption inquiry. A proliferation of community-specific communications equipment measures, each insisting upon a particular type of telephone, radio, or other device, would be incompatible with the congressional insistence upon uniformity. Similarly, in light of Congress' insistence upon the development of effective nationwide regulations, the failure of Montevallo to articulate a need for the requirement arising out of demonstrable local conditions fully justifies condemnation of the provision. The City has offered no proof that the customary means of notification—the telephone—cannot serve as an effective method of emergency communication.

Section 7–46(d) is inconsistent with the HMTA for other, equally compelling, reasons. Because the vast majority of hazardous waste-carrying vehicles are not equipped with citizens band radios, the Montevallo provision effectively acts as a routing requirement. Vehicles without installed and operational citizens band radios may not be utilized for the transport of hazardous waste into or through the City. The Department has consistently ruled that atypical local vehicle equipment requirements may discourage shippers from using otherwise desirable routes. It has, accordingly, found that local measures which call for additional equipment constitute the equivalent of impermissible routing regulations. See, e.g., Inconsistency Ruling 8, 49 FR 46637, 46638 (1984). See also former 44 CFR part 177, appendix A, VI(D) (1984) (rule inconsistent with the HMTA if it requires additional or special personnel, equipment or escort); Inconsistency Ruling 6, 48 FR 760, 765 (1983) (even threat of delay due to unique local requirements may divert shippers into other routes, thus imposing transportation burdens on unprepared jurisdictions); Inconsistency Ruling 3, 46 FR 18918, 18921 (1983) (same).

Montevallo's requirement is, if anything, more onerous than a typical routing provision. Such regulations generally prohibit the movement of hazardous materials in certain highly populated areas while providing for alternative transportation routes. Section 7–46(d), however, renders illegal all hazardous waste transportation in vehicles not equipped with radios, irrespective of population density. Similar equipment-related restrictions have likewise been condemned by the federal courts. See, e.g., *American Trucking Ass'ns* v. *City of Boston*, No. 81–628–MA (D. Mass. 1981) (city rule requiring vehicles transporting hazardous materials to be affixed with certain decals and placards not recognized by federal regulations inconsistent with the HMTA).

Finally, the Supreme Court has emphasized that, even in the case of an unquestionable safety hazard, a state or local government may not attempt to resolve the problem by effectively exporting it to another jurisdiction. *Kassel* v. *Consolidated Freightways*, 450 U.S. 662 (1981). The Department has appropriately acknowledged that the HMTA requires State and local governments to "act through a process that adequately weighs the full consequences of its choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules." Inconsistency Ruling 3, 46 FR 18918, 18922 (1981). Montevallo did not impose an outright ban on shipments of hazardous waste in order to divert traffic elsewhere. Yet requirements such as section 46(d) significantly raise the costs of transporting through the community and put transporters to the expense of adding additional and unnecessary equipment to vehicles. Movements of hazardous waste are, accordingly, likely to be diverted randomly rather than in a planned pattern. Given that a crucial purpose of the HMTA is to prevent unnecessary diversion, the mere possibility that the Montevallo requirement will place the burdens of hazardous waste transportation onto other jurisdictions necessitates rejection of section 46(d).

Certification

I hereby certify that a copy of this document has been forwarded to Steven R. Sears, City Attorney, Montevallo,

[3] See Inconsistency Ruling at 55 FR 36744 (finding time-of-day restrictions inconsistent with the HMTA given Montevallo's failure to demonstrate an "adequate overall safety justification"). The Montevallo separation requirement differs, both in form and effect, from the Boston provision addressed in Inconsistency Ruling 3. The Boston ordinance did not attempt to establish a universal, inflexible distance requirement. Instead, the regulation merely empowered the City to regulate "the distance that must be maintained between vehicles in transit."

Alabama at the address previously specified in the **Federal Register.**

Respectfully submitted,

John H. Turner,
Association Counsel, National Solid Wastes Management Association, 1730 Rhode Island Ave., NW., Suite 1000, Washington, DC 20036, (202) 659–4613.

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Part IV

Resolution Trust Corporation

Office of the Inspector General

12 CFR Part 1680
Disclosure of Information Regulations; Final Rule

RESOLUTION TRUST CORPORATION

12 CFR Part 1680

RIN 3205-AA10

Office of the Inspector General; Disclosure of Information Regulations

AGENCY: Resolution Trust Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Inspector General ("OIG") of the Resolution Trust Corporation ("RTC") is adopting a final rule for the processing of requests to the OIG for information pursuant to the Freedom of Information Act. The final rule also implements the Freedom of Information Reform Act of 1986 which requires agencies to publish a schedule of fees to be charged and procedures to be followed in processing requests for records and requests for waiver or reduction of fees under the Freedom of Information Act.

EFFECTIVE DATE: This final rule is effective October 17, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia M. Black, Counsel to the Inspector General, (202) 416-4312 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Discussion of Final Rule

A. Background

On July 25, 1991 the Inspector General published an interim rule to promulgate policies and regulations necessary to release information pursuant to the Freedom of Information Act (56 FR 34014). This rule set forth the procedures to be used in requesting information from the RTC OIG, the fees to be charged requestors, and the procedures for requesting waiver of fees under the Freedom of Information Act. Comments were to be made by September 23, 1991. No comments were received. Accordingly, the rule is being published without substantive change.

B. Requests for Information

The rule provides that all requests for OIG records should be sent to the OIG in Washington. The request must reasonably describe the desired record. The rule also publishes the addresses of RTC public information centers where many documents may be directly obtained by the public.

C. Initial and Final Decisions

The rule delegates to the Assistant Inspectors General the authority to make initial determinations concerning requests for release of information. In addition, Regional Inspectors General for Audit may release completed audit reports issued by that region. Final decisions on appeal will be made by the Inspector General or Deputy Inspector General.

D. Exemption From Disclosure

The rule recites the statutory bases for exemption from disclosure and provides that any reasonably segregable portion of a record shall be produced, as provided by the Freedom of Information Act.

E. Fees and Fee Waivers

The rule conforms with the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987 (52 FR 10012). Because the rule follows these guidelines, the fee schedule differs from that presently being used by the remainder of RTC, which is following regulations promulgated by the Federal Deposit Insurance Corporation prior to the date of the guidelines. However, the rule does reflect the fee schedule which the RTC is expected to adopt when it issues its regulations in the near future. Copies will be provided at $.20 per page, and requestors will be charged $12.50 per hour for clerical time and $30.00 per hour for professional time for searches. Computer time will be charged at the actual direct cost of providing the service.

The rule also sets forth factors to be considered in determining whether to waive or reduce fees. Requests for waivers or reduction must be in writing and address the six factors.

Regulatory Flexibility Act

The undersigned hereby certifies that this final regulation is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 12 CFR Part 1680

Freedom of information, Production and disclosure of information.

For the reasons set out in the preamble, the RTC-OIG revises part 1680 of title 12, chapter XVI of the Code of Federal Regulations to read as follows:

PART 1680—OFFICE OF INSPECTOR GENERAL; DISCLOSURE OF INFORMATION

Sec.

Authority: 5 U.S.C. 552; 5 U.S.C. App.; 12 U.S.C. 1441(a)(b).

§ 1680.1 Purpose and scope.

(a) This part contains the regulations of the Office of the Inspector General of the Resolution Trust Corporation ("RTC") which implement the Freedom of Information Act, as amended (5 U.S.C. 522). This part also informs the public how to request records and information from the Office of the Inspector General and explains the appeal procedure that may be used if a request is denied.

(b) Regulations governing disclosure of information by all offices within the RTC other than the Office of the Inspector General are published in part 309 of this Title.

§ 1680.2 Definitions.

(a) *Inspector General* means the Inspector General or Deputy Inspector General of the Resolution Trust Corporation (RTC).

(b) *Office of the Inspector General* means Office of the Inspector General of the RTC.

(c) *Person* includes corporations and organizations as well as individuals.

(d) *Record* includes records, files, documents, reports, correspondence, books, and accounts, or any portion thereof.

(e) *Request* means a written request for records made pursuant to the Freedom of Information Act and this part.

(f) *RTC* means Resolution Trust Corporation.

§ 1680.3 Requests for records.

(a) A request for Office of Inspector General records must be made in writing. The request should be addressed to: Office of the Inspector General, Resolution Trust Corporation,

801 17th Street, NW., Washington, DC 20434–0001.

(b) Each request must reasonably describe the desired record including the name, subject matter, and file number or date, where possible, so that the record may be identified and located. The request should include the name, address and telephone number of the requester. In order to enable the Office of the Inspector General to comply with the time limitations set forth in § 1680.13, both the envelope containing a written request and the letter itself should clearly indicate that the letter is a Freedom of Information Act request.

(c) The request must be accompanied by the fee or an offer to pay the fee as determined in §§ 1680.8 and 1680.9. At its discretion, the Office of the Inspector General may require advance payment in accordance with § 1680.12.

(d) Copies of available records will be produced as promptly as possible. Copying service will be limited to not more than one copy of any single page. Records which are published, available at the public information centers noted in § 1680.5, or otherwise available for sale, will not be reproduced.

§ 1680.4 Initial response.

The initial response to approve or deny a request will be made by one of the following individuals: Assistant Inspector General for Audit; Assistant Inspector General for Investigation; Assistant Inspector General for Quality Assurance and Oversight; Assistant Inspector General for Policy, Planning and Resources; or their designees. In addition, for completed audit reports issued by Regional Inspector General offices, the issuing Regional Inspector General for Audit ("RIGA") may release the completed report.

§ 1680.5 Obtaining publicly available information.

A listing of certain Federal Register publications and publicly available information is set forth in 12 CFR part 309. In addition to the information centers listed there, the Resolution Trust Corporation maintains the following information centers:

Headquarters, 801 17th Street, NW, Washington, DC 20434–0001
Southwest Region, 3500 Maple Avenue, Dallas, Texas 75219
North Central Region, 7400 West 110th Street, Overland Park, Kansas 66210–2346
Eastern Region, 245 Peachtree Center Avenue, NE, Atlanta, Georgia 30303
Western Region, 1225 17th Street—Suite 3200, Denver, Colorado 80202

§ 1680.6 Exemptions from disclosure.

The Office of the Inspector General will produce reasonably described records for which it receives a request under § 1680.3, except for those records exempt from production under Section 552(b) of the Freedom of Information Act. The classes of records falling within the exemptions are those pertaining to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and are in fact properly classified pursuant to such Executive Order;

(b) Related solely to the internal personnel rules and practices of the RTC;

(c) Specifically exempted from disclosure by statute, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the RTC;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual;

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the RTC or any agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and geophysical information and data, including maps concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions that are exempt under this section.

§ 1680.7 Records produced upon request when reasonably described.

(a) When a request is made which reasonably describes a record of the Office of the Inspector General which has been stored in the National Archives or other record center of the National Archives and Records Administration, the record will be requested by the Office of the Inspector General if it otherwise would be available under this part.

(b) Reasonable effort will be made to make a record in use by the staff of the Office of the Inspector General available when requested if it otherwise would be available under this part, but availability will be deferred to the extent necessary to avoid significant interference with the business of the Office of the Inspector General.

§ 1680.8 Fees.

(a) *Copies of records.* Requestors will be charged $0.20 per page for copies of documents up to 11" x 14". For copies prepared by computer, such as tapes or printouts, requestors will be charged the actual cost, including operator time, of production of the copy. For other methods of reproduction or duplication, the requestor will be charged the actual direct cost of producing the document(s).

(b) *Manual searches for records.* Wherever feasible, the requestor will be charged at the salary rate(s) (i.e. basic rate of pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively in a search (e.g. all administrative/clerical, or all professional/executive), the requestor will be charged $12.50 per hour for clerical time and $30.00 per hour for professional time. Charges for search time less than a full hour will be billed by five-minute segments.

(c) *Computer searches for records.* The requestor will be charged at the actual direct cost of providing the

service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(d) *Contract services.* The Office of the Inspector General may contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, the Office of the Inspector General will ensure that the ultimate cost to the requester is no greater than it would be if the Office of the Inspector General itself had performed these tasks. In no case will there be contracted out responsibilities which the FOIA provides that an Agency alone may discharge, such as determining the applicability of an exemption, or determine whether to waive or reduce fees.

(e) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, the first 100 pages of duplication and the first two hours of search time will be provided without charge. For non-commercial use requesters, the Office of the Inspector General will not begin to assess fees until after the free search and reproduction have been provided. No charge will be assessed non-commercial use requesters when the search time and reproduction costs, over and above the free search time and reproduction allocation, totals no more than $5.00. "Search time" in this context is based on manual search. To apply this term to searches made by computer, the Office of the Inspector General will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e. the operator, the Office of the Inspector General will begin assessing charges for computer search.

(f) *Payment of fees.* Payment of fees under this part shall be made in cash or by U.S. money order or by certified bank check payable to the Treasurer of the United States.

(g) *Definitions.* As used in this part:

(1) *Direct costs* means those expenditures actually incurred in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is distinguished from review of material in order to determine whether the material is exempt from disclosure.

(3) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) *Review* means the process of examining a document located in response to a request to determine whether any portion of it may be withheld, excising portions to be withheld and otherwise preparing the document for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

§ 1680.9 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. Specific levels of fees are prescribed for each of these categories:

(a) *Commercial use requesters.* (1) The Office of the Inspector General will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating records sought for commercial use. Commercial use requesters are not entitled to free search time or free pages of reproduction of documents.

(2) *Commercial use* refers to a request from, or on behalf of, one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Office of the Inspector General must determine the use to which a requester will put the documents requested. Moreover, where there is reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Office of the Inspector General will seek additional clarification before assigning the request to a specific category.

(b) *Educational and non-commercial scientific institution requesters.* (1) The Office of the Inspector General will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought for furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(2) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(3) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced in § 1680.9(a) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(c) *Requesters who are representatives of the news media.* (1) The Office of the Inspector General will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges of the first 100 pages. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(2) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news

organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Office of the Inspector General may also look to the past publication record of a requester in making this determination.

(d) *All other requesters.* The Office of the Inspector General will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from individuals for records about themselves filed in Office of Inspector General systems of records will be treated under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a) which permit fees only for reproduction.

§ 1680.10 Review of records, charges for unsuccessful searches, aggregating requests and waiving or reducing fees.

(a) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for the time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time the Office of the Inspector General analyzes the applicability of a specific exemption to a particular record or portion of a record. The Office of the Inspector General will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 1680.8.

(b) *Charges for unsuccessful searches.* Generally no charge for search time will be assessed when the records requested are not found or when the records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees shall be charged.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Office of the Inspector General reasonably believes that a requester or group of requesters acting in concert is attempting to evade the assessment of fees, it may aggregate any such requests and charge accordingly.

(d) *Waiving or reducing fees.* The Office of the Inspector General shall furnish documents without charge or at reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The official authorized to grant access to records may waive or reduce the applicable fee where requested in writing. The determination not to waive or reduce the fee will be subject to administrative review as provided in § 1680.17 after the decision on the request for access has been made. Six factors shall be used in determining whether the requirements for a fee waiver or reduction are met. Each request for a waiver or reduction in fees must provide information addressing the six factors. The factors are as follows:

(1) *The subject of the request.* Whether the subject of the requested records concerns "the operations or activities of the government";

(2) *The informative value of the information to be disclosed.* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to "public understanding";

(4) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(5) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(6) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

§ 1680.11 Charges for interest; utilization of Debt Collection Act.

(a) *Charging interest.* The Office of the Inspector General will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. A fee payment received by the Office of the Inspector General, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(b) *Use of the Debt Collection Act of 1982.* When a requester has failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the Office of the Inspector General may, under the authority of the Debt Collection Act, use consumer reporting agencies and collection agencies, where appropriate, to recover the indebtedness owed.

§ 1680.12 Advance payments.

(a) The Office of the Inspector General may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Office of the Inspector General estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. In that event, the Office of the Inspector General will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of a requester with no history of payment; or

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the Office of the Inspector General may require the requester to pay the full amount owed or demonstrate that the fees have in fact, been paid, and to make an advance payment of the full amount of the estimated fee before the Office of the Inspector General begins to process a new request or a pending request from that requester.

(b) When the Office of the Inspector General acts under paragraph (a)(1) or (a)(2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6), (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the fee payments described above have been received.

(c) Where it is anticipated that either the duplication fee individually, the search fee individually, or a combination of the two exceeds $25.00

over and above the free search time and duplication costs, where applicable, and the requesting party has not indicated in advance a willingness to pay such anticipated fee, the requesting party shall be promptly informed of the amount of the anticipated fee or such portion thereof as can readily be estimated. The notification shall offer the requesting party the opportunity to confer for the purpose of reformulating the request so as to meet that party's needs at a reduced cost.

§ 1680.13 Time limitations.

(a) Upon receipt of a request for records, the Assistant Inspector General or RIGA listed in § 1680.4, as appropriate, will determine within ten working days whether to grant the request. The appropriate Assistant Inspector General or RIGA will notify the requester immediately in writing of the determination, and, if the determination is to deny all or a portion of the request, the reasons for the determination and the right of the person to appeal an adverse determination to the Inspector General of the RTC.

(b) The time of receipt for processing a request is the time it is received by the appropriate office for review. If a request is misdirected by the requester, the Office of the Inspector General or RTC official who receives the request will promptly refer it to the appropriate office. The time allowed for response will not begin to run until receipt by the appropriate office.

(c) A determination with respect to an appeal of an initial denial to the Inspector General under § 1680.17 will be made within 20 working days after receipt and will be communicated immediately to the person requesting review.

(d) If the Office of the Inspector General grants the request for records, the records will be made available promptly to the requester.

(e) In unusual circumstances as specified in this paragraph, the time limits prescribed in this section may be extended. Any extension will be in writing to the requester and will include reasons for the extension and the date on which the disposition of the request will be sent. No extension will be for more than ten working days. As used in this paragraph, "unusual circumstances" means (but only to the extent necessary for the proper processing of the particular request) that there is a need:

(1) To search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(2) To search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) For consultation, which shall be conducted with all practicable speed, with another office having a substantial interest in the determination of the request or among two or more offices of the Office of the Inspector General having a substantial interest in the subject matter of the request.

(f) Review of requests may be discontinued until:

(1) Appropriate advance payment is received;

(2) Agreement to bear estimated costs is received; or

(3) A determination is made on a request for waiver or reduction of fees.

§ 1680.14 Authority to release records or copies.

Any Assistant Inspector General listed in § 1680.4, or designee, is authorized to release any record (or copy) pertaining to activities for which he or she has primary responsibility, unless disclosure is clearly inappropriate under this part. Any RIGA listed in § 1680.4 may release completed audit reports issued by that RIGA. Records for which another officer has primary responsibility may not be released by an authorized person without the consent of the officer or his or her designee.

§ 1680.15 Authority to deny requests for records and form of denial.

The Assistant Inspectors General described in § 1680.4, or designee, may deny a request for a record. Any denial will:

(a) Be in writing;

(b) State simply the reasons for the denial;

(c) State that the denial may be appealed to the Inspector General;

(d) Set forth the steps for appealing consistent with § 1680.17; and

(e) Be signed by the Assistant Inspector General responsible for the denial.

§ 1680.16 Effect of denial of request.

Denial of a request shall terminate the authority of the Assistant Inspector General to release or disclose the requested record, which thereafter may not be made available except with express authorization of the Inspector General.

§ 1680.17 Appeals from denials of initial requests.

(a) A person whose initial request for records under this part has been denied, either in part or in whole, has the right to appeal the denial to the Inspector General within 30 business days of the issuance of the written denial.

(b) Appeals of initial denials must be in writing, addressed to the Office of the Inspector General, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434–0001, and shall contain the following:

(1) A copy of the initial request;

(2) A copy of the written denial issued under § 1680.15; and

(3) A statement of the circumstances, reasons, additional relevant information or arguments advanced in support of disclosure of the documents requested.

(c) The Inspector General will issue a written determination within 20 business days after receipt of the appeal by the Office of the Inspector General unless extended pursuant to § 1680.13(e). This determination will constitute final agency action. The Inspector General will obtain the concurrence of the Counsel to the Inspector General with respect to determinations concerning information, records, or other documents developed or originated by the Office of the Inspector General. The Inspector General will obtain the concurrence of the RTC Special Counsel with respect to determinations concerning other records.

(d) The time of receipt for processing of an appeal is the time it is received by the Inspector General of the RTC. If the appeal is misdirected by the requester and is received by one other than the Inspector General, the RTC official who receives the appeal will forward it promptly to the Inspector General at the time of receipt. The time allowed for response will not begin to run until receipt by the Inspector General.

(e) Where the determination is to deny the appeal, in whole or in part, the determination shall cite the exemption relied upon to support the denial and shall inform the appealing requestor of the right to judicial review of the denial under the Freedom on Information Act (5 U.S.C. 552).

Dated at Washington, DC, this 3rd day of October 1991.

Office of the Inspector General.

John J. Adair,

Inspector General, Resolution Trust Corporation.

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October 17, 1991

Part V

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry

Environmental Protection Agency

The Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

ENVIRONMENTAL PROTECTION AGENCY

[ATSDR-40]

The Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCIES: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS); and Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), establishes certain requirements for ATSDR and EPA with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). CERCLA, as amended (42 U.S.C. 9604(i)(2)), requires that the two agencies prepare a list, in order of priority, of at least 100 hazardous substances that are most commonly found at facilities on the NPL and which, in their sole discretion, are determined to pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). CERCLA also requires the agencies to revise the priority list to include 100 or more additional hazardous substances (see 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (see 54 FR 43619, October 26, 1989; 55 FR 42067, October 17, 1990). Each substance on the priority list of hazardous substances becomes the subject of a toxicological profile prepared by ATSDR.

This notice provides a revised priority list of 275 hazardous substances based on the most comprehensive information currently available for substances found at NPL sites. This notice identifies additional substances whose total score did not differ considerably from substances near the lower end of the revised priority list; it also provides substances identified on previous priority lists but not included on the revised priority list. This revised priority list of hazardous substances replaces previously published priority lists. The agencies intend to revise the list of hazardous substances annually to reflect changes and improvements in data collection.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR-40, and should be submitted to: ATSDR, Division of Toxicology, Mail Stop E-29, 1600 Clifton Road NE., Atlanta, GA 30333.

All comments will be placed in a publicly accessible docket; therefore, please do not submit confidential business information.

FOR FURTHER INFORMATION CONTACT: Quality Assurance Branch, Division of Toxicology, ATSDR, Atlanta, GA, 30333; telephone: 404-639-6030 or FTS 236-6030.

SUPPLEMENTARY INFORMATION:

I. Background

Section 104(i) of CERCLA, as amended, requires ATSDR and EPA to: (1) Prepare a list of hazardous substances found at NPL sites (in order of priority), (2) develop toxicological profiles for those substances, and (3) initiate a research program to fill priority data needs identified for the substances.

The first priority list of 100 substances was published in the **Federal Register** on April 17, 1987 (52 FR 12866), with a summary of the procedure used by ATSDR and EPA to compile the list. In that notice, the agencies solicited public comment on the approach adopted for evaluating and ranking hazardous substances found at NPL sites and announced the intention to refine the listing process in response to these comments, as well as continued efforts by the agencies to improve the listing process.

A second priority list of 100 additional substances was published on October 20, 1988 (53 FR 41280), and the revised procedure used to prepare the second priority list was summarized. For the most part, the same procedure was used to generate the third and fourth lists of 25 substances each (54 FR 43619, October 26, 1989, and 55 FR 42067, October 17, 1990).

The previous priority lists of hazardous substances were based on the most comprehensive and relevant information available when the lists were developed. More comprehensive sources of information for the frequency of occurrence of substances at NPL sites and the potential for human exposure at these sites have become available since publication of the first priority list in 1987. A notice announcing the intention of ATSDR and EPA to revise the priority list of hazardous substances was published on June 27, 1991 (56 FR 29485). Comments received by the agencies have been considered in the re-evaluation of the 250 previously listed substances and in the identification of additional substances.

The approach used to generate the revised priority list of hazardous substances is summarized below. ATSDR and EPA solicit comment on this approach; such comments should be submitted in accordance with the instructions given in this notice. The agencies will continue to seek improvements in the listing process as future revisions of the list are prepared. All comments previously received are in the public file (see section V of this notice).

II. Methodology for Selecting Substances for the Revised Priority List

A. General Approach Taken by ATSDR and EPA

The approach used by ATSDR and EPA to generate the revised priority list of hazardous substances is a modification of the approaches used for the previous lists. The modifications reflect efforts to: (1) Improve data acquisition for substances on the previous lists, and (2) adapt the method to include data sources that provide a more direct indication of potential exposure to substances found at NPL sites. The hazardous substances evaluated for the revised priority list included approximately 700 hazardous substances with documented evidence of occurrence at three or more NPL sites. In the development of the list, ATSDR and EPA established the priority of these substances based on the following three criteria for determining the degree to which each substance poses a potential human health risk: (1) Frequency of occurrence at NPL sites, (2) toxicity, and (3) potential for human exposure to the substance. These criteria meet the requirements of section 104(i)(2) of CERCLA, as amended, and reflect the general practice of defining human health risk in terms of the toxicity and human exposure potential of a substance.

B. Determination of the Frequency of Occurrence Criterion of the Ranking Methodology

ATSDR and EPA selected ATSDR's HAZDAT database as the source of data for the frequency of occurrence of substances at NPL hazardous waste sites or facilities. The HAZDAT system is the scientific and administrative database developed by ATSDR as a repository for information on hazardous substances found at NPL and non-NPL

waste sites or emergency events and on the potential health effects of hazardous substances on human populations. The sources of HAZDAT site-specific information include ATSDR health assessments, health consultations, and other site-specific documents submitted to ATSDR by EPA, state agencies, and other parties. HAZDAT has information on approximately 1300 sites that have been proposed for, listed on, or delisted from the NPL. Furthermore, the HAZDAT database contains information on substances that have been identified at sites but are currently not included in EPA's Contract Laboratory Program databases. HAZDAT contains information on substances found in groundwater, surface water, leachate, soil, sludge, sediment, air, soil gas, biota, human tissues, and waste materials or containers. The number of NPL sites at which a substance was identified in any medium in health assessment or site-file documents was used to indicate the frequency of occurrence.

C. Determination of the Toxicity Component of the Ranking Methodology

For several reasons, ATSDR and EPA continued to use the Reportable Quantity (RQ) approach as the toxicity hazard scoring system. It provides the most complete characterization of toxicity of all hazard scoring systems reviewed by the two agencies; other schemes were more limited in either the consideration of different types of toxic effects, severity of effects, or potency. In addition, toxicity data used in the RQ approach are derived from primary peer-reviewed literature, and Rqs have already been established for the majority of substances frequently detected at hazardous waste sites. Moreover, the determination of RQ health effect values utilizes weight-of-evidence considerations in the evaluation of data.

The reportable quantity ranking scheme was developed by EPA to set RQs for hazardous substances as required by CERCLA. Under CERCLA section 103(a), any person in charge of a vessel or an offshore or onshore facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center and state and local response authorities of the release. RQs are developed for individual chemicals and for waste streams that have already been designated under CERCLA section 101(14) as hazardous substances.

Each CERCLA hazardous substance is assigned to one of five tiered RQ categories (1, 10, 100, 1000, and 5000 pounds) based on acute toxicity, chronic toxicity, carcinogenicity, aquatic toxicity, and ignitability and reactivity. RQs are determined for each criterion separately; the lowest of these is selected as the RQ for the substance, subject to adjustment for potential hydrolysis, photolysis, or biodegradation in the environment. The RQ scoring scheme is described in several **Federal Register** notices (50 FR 13456, April 4, 1985; 51 FR 34534, September 29, 1986; and 52 FR 8140, March 16, 1987; 54 FR 35988, August 30, 1989). The RQ methodology was applied for those candidate substances without final CERCLA RQs to establish a Toxicity/Environmental Score (TES). These scores were developed for use only in the ranking methodology and do not represent regulatory amounts.

D. Determination of the Potential for Human Exposure Component of the Ranking Methodology

In the approach for the revised priority list, ATSDR and EPA identified the most useful and directly relevant data to assess the potential for human exposure to hazardous substances at NPL sites. The exposure component was based on the following information:

1. Concentrations of the Substances in Environmental Media

To provide a means of ranking substances based on concentration data, the following formula for calculating a relative source contribution (SC) was used:

$$SC = \frac{(\overline{C}_a A_a) + (\overline{C}_w A_w) + (\overline{C}_s A_s)}{RQ \text{ or } TES}$$

Where $\overline{C}_x$ = geometric mean concentration of the substance in a particular environmental medium (a = air, w = water, s = soil); A_x = standard exposure assumption for the particular environmental medium to approximate a theoretical daily dose to humans (e.g., 1 liter of drinking water consumed per day); and RQ or TES = the Reportable Quantity or Toxicity/Environmental Score for the substance. The calculation of the source contribution was included in the methodology to distinguish between those substances that occur at low concentrations but are highly toxic and those substances that occur at higher concentratiosurface water, public groundwater, private groundwater, and groundwater unspecified), and soil (top soil, subsurface soil, soil of unspecified depth) were used in this part of the ranking algorithm. Substances with concentration data in HAZDAT were evaluated with respect to the maximum concentration in a particular medium at a site, and the geometric mean concentration across NPL sites for each medium was determined. The agencies applied exposure assumptions for children (e.g., 1 liter of water consumed per day, 200 milligrams of soil ingested per day, and 15 cubic meters of air breathed per day) to determine the theoretical daily dose.

2. Exposure Status of Populations

Information concerning documented exposure or potential exposure to a particular substance or to environmental media in which a substance is found was also used in the exposure component. HAZDAT provides information on exposure or potential exposure to specific substances and to media, such as drinking water, in which substances have been reported. Substances were scored differentially with respect to mention in an ATSDR Health Assessment of exposure or potential exposure to a particular substance or to exposure or potential exposure to an environmental medium containing the substance.

3. Populations Surrounding NPL Sites

In the notice announcing the intent to revise the priority list of hazardous substances (56 FR 29485, June 27, 1991), the agencies indicated that estimates of populations surrounding NPL sites would be used to assess the potential for human exposure for substances that lacked concentration data or information on exposure or potential exposure to substances or media. Population data were not used to develop this list because concentration or exposure data were available for all substances found at three or more sites. The agencies intend to assess the usefulness of 1990 Census data in future listing activities as these data become available.

III. Revised Priority List of Hazardous Substances

A. Generation of the Revised Priority List

Using the data sources described in this notice, ATSDR and EPA have ranked the hazard potential of each candidate substance according to the following algorithm:

$$\text{TOTAL SCORE (1800 max. points)} = \text{NPL FREQUENCY (600 points)} + \text{TOXICITY (600 points)} + \text{POTENTIAL FOR HUMAN EXPOSURE (300 points)} + \text{(300 points)}$$

The algorithm is described in greater detail in the support document for this notice, which is contained in the public file (see section V of this notice).

B. List of Substances

The revised priority list of 275 hazardous substances is presented in Table 1. The substances are presented in rank order, based on the total score for each substance. For presentation purposes, most values have been rounded to whole numbers; greater detail is provided in the support document (see section V of this notice).

The previous priority lists of 250 hazardous substances actually included 271 substances because some related ubstances were combined in the ranking. For example, p,p'-DDT, p,p'-DDD, and p,p'-DDE were combined to represent one listed substance. In this revised priority list, each substance has been listed separately. This list will be used by ATSDR to guide the development of toxicological profiles and the subsequent identification of priority data needs. Although the substances have been listed separately, related substances may be combined for consideration in a toxicological profile and attending priority data needs.

The CERCLA legislation requires that the agencies prepare a list of at least 275 substances; due to similarities in scoring, an additional 56 substances have been identified in the listing activity and are provided in Table 2. These substances have been provided in this notice because their total scores did not differ considerably from substances near the lower end of the priority list of 275 substances. At the discretion of ATSDR, these substances may be considered for inclusion in future toxicological profiles.

Table 3 provides a list of 67 substances that appeared on previous priority lists but are not included on the revised priority list of 275 hazardous substances nor in Table 2.

The substances in Tables 2 and 3 will not be considered for development of toxicological profiles at this time unless a profile is developed for related forms of the substance that are included on the revised priority list. Some substances in Tables 2 and 3 have been the subject of toxicological profiles; these profiles will not be updated nor will attending priority data needs be developed unless additional concern is generated in future listing activities.

IV. Future Revisions of the Priority List

ATSDR and EPA intend to evaluate the priority list annually and make further refinements where possible. For example, ATSDR intends to assess the data for naturally occurring substances in order to adjust for natural background concentrations in the environment, as well as identify speciation of substances, where possible.

V. Administrative Record

ATSDR and EPA are establishing a single administrative record entitled ATSDR–40 for materials pertaining to this notice. All materials received as a result of this notice will be included in the public file which is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal legal holidays, at the Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia.

For the Agency for Toxic Substances and Disease Registry.

Dated: October 7, 1991.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

For the Environmental Protection Agency.

Dated: October 10, 1991.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances, Environmental Protection Agency.

BILLING CODE 4160-70-M

Table 1. — Revised Priority List of Hazardous Substances

Rank	CAS Number	Contaminant Name	Total Pts	NPL Freq	Freq Pts	RQ	TES	Tox Pts	Source Contrib	Conc Pts	Expos Poten	Expos Pts
1	7439-92-1	LEAD	1673	853	600	1		600	3.9E−01	230	35(1)	243
2	7440-38-2	ARSENIC	1555	729	513	1		600	2.4E−01	224	15(1)	218
3	7439-97-6	MERCURY	1430	568	400	1		600	1.7E−01	221	8(1)	210
4	75-01-4	VINYL CHLORIDE	1348	418	294	1		600	4.6E−01	232	18(1)	222
5	71-43-2	BENZENE	1327	692	487	10		400	5.5E−02	208	27(1)	233
6	7440-43-9	CADMIUM	1291	701	493	10		400	6.1E−03	182	13(1)	216
7	1336-36-3	POLYCHLORINATED BIPHENYLS	1248	314	221	1		600	1.4E−01	218	8(1)	210
8	67-66-3	CHLOROFORM	1234	596	419	10		400	1.3E−02	191	20(1)	224
9	205-99-2	BENZO(B)FLUORANTHENE	1187	273	192	1		600	1.0E−01	214	130(2)	181
10	79-01-6	TRICHLOROETHYLENE	1180	745	524	100		178	4.1E−03	178	82(1)	300
11	57-74-9	CHLORDANE	1177	153	108	1		600	9.3E+00	266	3(1)	204
12	50-32-8	BENZO(A)PYRENE	1171	295	208	1		600	6.7E−02	210	14(2)	153
13	11096-82-5	AROCLOR 1260	1160	207	146	1		600	7.9E−02	212	2(1)	202
14	11097-69-1	AROCLOR 1254	1155	217	153	1		600	2.8E−02	200	2(1)	202
15	50-29-3	DDT, P,P'-	1148	233	164	1		600	5.6E−03	182	2(1)	202
16	8001-58-9	CREOSOTE	1122	30	21	1		600	1.9E+02	300	1(1)	201
17	72-55-9	DDE, P,P'-	1110	189	133	1		600	3.5E−03	176	1(1)	201
18	12672-29-6	AROCLOR 1248	1110	118	83	1		600	2.7E−01	225	1(1)	201
19	18540-29-9	▲CHROMIUM, HEXAVALENT	1100	82	58		1	600	6.3E−01	235	6(1)	207
20	53-70-3	DIBENZO(A,H)ANTHRACENE	1097	141	99	1		600	2.1E−02	196	1(1)	201
21	58-89-9	HEXACHLOROCYCLOHEXANE, GAMMA-	1079	136	96	1		600	5.9E−03	182	1(1)	201
22	127-18-4	TETRACHLOROETHYLENE	1078	673	473	100		178	2.6E−03	173	44(1)	254
23	309-00-2	ALDRIN	1070	126	89	1		600	4.9E−03	180	1(1)	201
24	72-54-8	DDD, P,P'-	1065	146	103	1		600	9.8E−04	162	1(1)	201
25	57-12-5	CYANIDE	1063	366	257	10		400	4.0E−02	204	1(1)	201
26	76-44-8	HEPTACHLOR	1062	126	89	1		600	2.5E−03	172	1(1)	201
27	319-85-7	HEXACHLOROCYCLOHEXANE, BETA-	1059	105	74	1		600	6.8E−03	184	1(1)	201
28	84-74-2	DI-N-BUTYL PHTHALATE	1053	394	277	10		400	5.1E−03	180	194(2)	196
29	53469-21-9	AROCLOR 1242	1040	129	91	1		600	1.3E−02	191	36(2)	159
30	60-57-1	DIELDRIN	1034	149	105	1		600	1.7E−03	168	47(2)	161
31	87-86-5	PENTACHLOROPHENOL	1028	228	160	10		400	9.7E+00	266	1(1)	201
32	72-20-8	ENDRIN	1008	88	62	1		600	1.9E−02	196	3(2)	151
33	56-23-5	CARBON TETRACHLORIDE	1006	266	187	10		400	3.7E−02	203	13(1)	216
34	7440-41-7	BERYLLIUM	1005	329	231	10		400	2.6E−03	173	1(1)	201
35	108-88-3	TOLUENE	1003	787	554	1000		53	5.0E−03	180	13(1)	216
36	87-68-3	HEXACHLOROBUTADIENE	1002	43	30	1		600	1.3E−01	217	19(2)	154
37	8001-35-2	TOXAPHENE	1001	56	39	1		600	7.1E−02	210	3(2)	151
38	959-98-8	ENDOSULFAN, ALPHA	992	66	46	1		600	1.1E−02	189	28(2)	157
39	1746-01-6	2,3,7,8-TETRACHLORO-DIBENZO-P-DIOXIN	992	57	40	1		600	3.3E−04	149	2(1)	202
40	56-55-3	BENZO(A)ANTHRACENE	991	311	219	10		400	1.1E−02	189	138(2)	183
41	319-86-8	HEXACHLOROCYCLOHEXANE, DELTA-	989	84	59	1		600	2.8E−03	173	28(2)	157
42	7440-02-0	NICKEL	982	603	424	100		178	4.0E−03	178	2(1)	202
43	7439-96-5	MANGANESE	970	548	385		100	178	3.4E−02	202	4(1)	205
44	67708-83-2	▲DIBROMOCHLOROPROPANE	964	12	8		1	600	4.8E−04	154	2(1)	202
45	72-43-5	METHOXYCHLOR	964	36	25	1		600	8.6E−03	186	11(2)	153
46	91-94-1	3,3'-DICHLOROBENZIDINE	961	26	18	1		600	9.8E−03	188	19(2)	154
47	75-60-5	▲DIMETHYLARSINIC ACID	957	8	6	1		600	3.0E−02	200	6(2)	151
48	33213-65-9	ENDOSULFAN, BETA	956	39	27	1		600	3.5E−03	176	12(2)	153
49	106-93-4	1,2-DIBROMOETHANE	951	17	12	1		600	1.0E−02	188	3(2)	151
50	192-97-2	▲BENZO(E)PYRENE	951	30	21		1	600	4.4E−03	179	5(2)	151
51	1024-57-3	HEPTACHLOR EPOXIDE	944	81	57	1		600	8.8E−05	134	14(2)	153
52	75-09-2	METHYLENE CHLORIDE	941	711	500	1000		53	2.7E−03	173	12(1)	215
53	7440-66-6	ZINC	938	711	500	1000		53	3.3E−03	175	8(1)	210
54	203-33-8	▲BENZO(A)FLUORANTHENE	932	39	27		1	600	4.9E−04	154	3(2)	151
55	7440-47-3	CHROMIUM	930	815	573	5000		10	6.4E−05	131	13(1)	216
56	117-81-7	DI(2-ETHYLHEXYL)PHTHALATE	928	543	382	100		178	1.4E−03	166	2(1)	202
57	115-29-7	ENDOSULFAN	920	40	28	1		600	9.8E−05	135	27(2)	156
58	53494-70-5	▲ENDRIN KETONE	919	28	20		1	600	3.3E−04	149	2(2)	150

Table 1. — Revised Priority List of Hazardous Substances — Continued

Rank	CAS Number	Contaminant Name	Total Pts	NPL Freq	Freq Pts	RQ	TES	Tox Pts	Source Contrib	Conc Pts	Expos Poten	Expos Pts
59	74-82-8	▲METHANE	915	58	41		10	400	1.7E+01	273	1(1)	201
60	91-20-3	NAPHTHALENE	890	462	325	100		178	6.5E−03	183	3(1)	204
61	107-06-2	1,2-DICHLOROETHANE	881	425	299	100		178	4.5E−03	179	21(1)	226
62	591-78-6	2-HEXANONE	872	169	119		10	400	9.9E−03	188	66(2)	166
63	75-35-4	1,1-DICHLOROETHENE	864	432	304	100		178	8.5E−04	160	18(1)	222
64	71-55-6	1,1,1-TRICHLOROETHANE	864	612	430	1000		53	4.3E−04	152	23(1)	228
65	108-90-7	CHLOROBENZENE	861	408	287	100		178	6.1E−03	182	11(1)	213
66	100-41-4	ETHYL BENZENE	859	618	435	1000		53	1.1E−03	163	7(1)	209
67	12587-46-1	▲ALPHA RADIATION	840	53	37		1◆	600	*N.D.*	0	2(1)	202
68	1330-20-7	TOTAL XYLENES	838	576	405	1000		53	2.6E−03	173	6(1)	207
69	118-96-7	TRINITROTOLUENE	834	18	13		10	400	1.4E−01	218	2(1)	202
70	92-87-5	BENZIDINE	829	26	18	1		600	1.1E−02	189	16(4)	21
71	7440-14-4	RADIUM	827	36	25		1◆	600	*N.D.*	0	1(1)	201
72	99-35-4	1,3,5-TRINITROBENZENE	826	14	10	10		400	1.1E−01	215	1(1)	201
73	7440-61-1	URANIUM	824	33	23		1◆	600	*N.D.*	0	1(1)	201
74	7440-50-8	COPPER	821	666	468	5000		10	1.2E−04	138	4(1)	205
75	206-44-0	FLUORANTHENE	819	393	276	100		178	2.4E−03	172	182(2)	193
76	121-14-2	2,4-DINITROTOLUENE	819	66	46	10		400	2.1E−03	170	2(1)	202
77	319-84-6	HEXACHLOROCYCLOHEXANE, ALPHA-	819	95	67	10		400	3.8E−04	151	1(1)	201
78	7440-29-1	THORIUM	819	25	18		1◆	600	*N.D.*	0	1(1)	201
79	101-14-4	4,4'-METHYLENEBIS-(2-CHLOROANILINE)	816	5	4	10		400	7.9E−02	212	1(1)	201
80	75-34-3	1,1-DICHLOROETHANE	816	516	363	1000		53	5.8E−03	182	15(1)	218
81	10043-92-2	RADON	813	17	12		1◆	600	*N.D.*	0	1(1)	201
82	111-44-4	BIS(2-CHLOROETHYL) ETHER	811	68	48	10		400	4.7E−02	206	32(2)	158
83	621-64-7	N-NITROSODI-N-PROPYLAMINE	805	50	35	10		400	1.8E−03	168	1(1)	201
84	7440-39-3	BARIUM	804	544	383		1000	53	1.2E−03	164	4(1)	205
85	108-95-2	PHENOL	804	512	360	1000		53	8.2E−03	186	4(1)	205
86	1031-07-8	ENDOSULFAN SULFATE	804	70	49	1		600	*N.D.*	0	19(2)	154
87	7723-14-0	PHOSPHORUS	803	68	48	1		600	*N.D.*	0	21(2)	155
88	7782-49-2	SELENIUM	800	373	262	100		178	7.6E−04	159	1(1)	201
89	39001-02-0	▲OCTACHLORODIBENZOFURAN	794	33	23		10	400	1.4E−01	218	9(2)	152
90	1332-21-4	ASBESTOS	791	52	37	1		600	*N.D.*	0	20(2)	155
91	12674-11-2	AROCLOR 1016	789	51	36	1		600	*N.D.*	0	14(2)	153
92	59536-65-1	POLYBROMINATED BIPHENYLS	788	9	6		10	400	5.2E−03	180	1(1)	201
93	3268-87-9	OCTACHLORODIBENZO-P-DIOXIN	783	42	30		10	400	3.3E−02	202	7(2)	152
94	88-06-2	2,4,6-TRICHLOROPHENOL	780	74	52	10		400	3.4E−03	176	9(2)	152
95	218-01-9	CHRYSENE	780	344	242	100		178	2.2E−03	171	165(2)	189
96	156-60-5	1,2-DICHLOROETHENE, TRANS-	774	499	351	1000		53	3.1E−04	148	18(1)	222
97	12587-47-2	▲BETA RADIATION	773	31	22		1◆	600	*N.D.*	0	7(2)	152
98	11141-16-5	AROCLOR 1232	770	25	18	1		600	*N.D.*	0	12(2)	153
99	67-64-1	ACETONE	768	520	366	5000		10	8.4E−03	186	5(1)	206
100	333-41-5	▲DIAZINON	767	22	15	1		600	*N.D.*	0	7(2)	152
101	107-02-8	ACROLEIN	767	24	17	1		600	*N.D.*	0	1(2)	150
102	7421-93-4	ENDRIN ALDEHYDE	764	18	13	1		600	*N.D.*	0	5(2)	151
103	13982-63-3	▲RADIUM-226	763	17	12		1◆	600	*N.D.*	0	5(2)	151
104	5103-71-9	▲ALPHA CHLORDANE	761	15	11	1		600	*N.D.*	0	2(2)	150
105	5103-74-2	▲GAMMA CHLORDANE	760	13	9	1		600	*N.D.*	0	4(2)	151
106	302-01-2	HYDRAZINE	758	6	4	1		600	*N.D.*	0	15(2)	154
107	77-47-4	HEXACHLOROCYCLO-PENTADIENE	757	28	20	10		400	7.4E−03	185	12(2)	153
108	10028-17-8	TRITIUM	757	9	6		1◆	600	*N.D.*	0	3(2)	151
109	198-55-0	▲PERYLENE	757	9	6		1	600	*N.D.*	0	1(2)	150
110	1327-53-3	▲ARSENIC TRIOXIDE	757	9	6	1		600	*N.D.*	0	1(2)	150
111	96-12-8	1,2-DIBROMO-3-CHLORO-PROPANE	755	6	4	1		600	*N.D.*	0	5(2)	151
112	298-04-4	DISULFOTON	755	7	5	1		600	*N.D.*	0	2(2)	150
113	15262-20-1	▲RADIUM-228	755	7	5		1◆	600	*N.D.*	0	2(2)	150
114	12001-29-5	▲CHRYSOTILE	755	6	4	1		600	*N.D.*	0	3(2)	151
115	25167-82-2	▲TRICHLOROPHENOL	754	9	6	10		400	2.3E−02	197	1(2)	150
116	14274-82-9	▲THORIUM-228	754	5	4		1◆	600	*N.D.*	0	2(2)	150

Table 1. — Revised Priority List of Hazardous Substances — Continued

Rank	CAS Number	Contaminant Name	Total Pts	NPL Freq	Freq Pts	RQ	TES	Tox Pts	Source Contrib	Conc Pts	Expos Poten	Expos Pts
117	86-50-0	▲GUTHION	754	5	4	1		600	*N.D.*	0	1(2)	150
118	786-19-6	▲CARBOPHENOTHION	753	4	3		1	600	*N.D.*	0	1(2)	150
119	13233-32-4	▲RADIUM-224	753	3	2		1◆	600	*N.D.*	0	2(2)	150
120	79-34-5	1,1,2,2-TETRACHLOROETHANE	740	253	178	100		178	5.2E−03	181	3(1)	204
121	51-28-5	2,4-DINITROPHENOL	735	55	39	10		400	1.2E+01	269	21(4)	28
122	118-74-1	HEXACHLOROBENZENE	723	78	55	10		400	2.3E−02	198	55(4)	71
123	608-73-1	▲HEXACHLOROCYCLOHEXANE	721	36	25		10	400	2.2E−04	144	6(2)	151
124	7440-48-4	COBALT	720	276	194		100	178	1.7E−03	168	128(2)	180
125	41903-57-5	▲TETRACHLORODIBENZO-P-DIOXIN	719	39	27		10	400	1.9E−06	91	1(1)	201
126	95-50-1	1,2-DICHLOROBENZENE	718	229	161	100		178	4.1E−03	178	1(1)	201
127	83-32-9	ACENAPHTHENE	717	246	173	100		178	1.3E−02	191	105(2)	175
128	91-57-6	2-METHYLNAPHTHALENE	716	267	188		100	178	2.8E−04	148	2(1)	202
129	75-15-0	CARBON DISULFIDE	710	188	132	100		178	2.2E−02	197	2(1)	202
130	105-67-9	2,4-DIMETHYLPHENOL	708	194	136	100		178	4.9E−01	232	46(2)	161
131	25323-89-1	TRICHLOROETHANE	695	215	151		100	178	1.2E−03	164	1(1)	201
132	79-00-5	1,1,2-TRICHLOROETHANE	692	176	124	100		178	9.1E−03	187	3(1)	204
133	85-68-7	BUTYL BENZYL PHTHALATE	686	234	165	100		178	1.5E−03	166	113(2)	177
134	37871-00-4	▲HEPTACHLORODIBENZO-P-DIOXIN	682	40	28		10	400	5.2E−06	102	9(2)	152
135	122-66-7	1,2-DIPHENYLHYDRAZINE	679	22	15	10		400	1.4E−05	114	2(2)	150
136	7440-31-5	TIN	674	190	134		100	178	1.6E−02	194	78(2)	168
137	78-93-3	2-BUTANONE	673	413	291	5000		10	1.9E−03	168	3(1)	204
138	106-46-7	1,4-DICHLOROBENZENE	671	228	160	100		178	8.2E−04	160	96(2)	173
139	75-00-3	CHLOROETHANE	670	235	165	100		178	4.1E−04	152	106(2)	175
140	7429-90-5	ALUMINUM	667	397	279		5000	10	3.6E−03	176	1(1)	201
141	7664-41-7	AMMONIA	663	108	76	100		178	3.4E+00	254	19(2)	154
142	34465-46-8	HEXACHLORODIBENZO-P-DIOXIN	663	39	27		10	400	1.1E−06	84	5(2)	151
143	25167-83-3	▲TETRACHLOROPHENOL	662	14	10		10	400	4.1E−03	178	58(4)	74
144	534-52-1	4,6-DINITRO-O-CRESOL	660	41	29	10		400	1.7E−01	220	8(4)	11
145	120-82-1	1,2,4-TRICHLOROBENZENE	656	143	101	100		178	3.6E−03	176	1(1)	201
146	15117-96-1	▲URANIUM-235	654	9	6		1◆	600	*N.D.*	0	37(4)	48
147	465-73-6	▲ISODRIN	654	3	2	1		600	*N.D.*	0	40(4)	52
148	55684-94-1	▲HEXACHLORODIBENZOFURAN	648	33	23		10	400	4.2E−07	73	9(2)	152
149	193-39-5	INDENO(1,2,3-CD)PYRENE	645	216	152	100		178	2.1E−04	144	91(2)	172
150	110-54-3	HEXANE	641	59	42		100	178	1.8E−01	221	1(1)	201
151	38998-75-3	▲HEPTACHLORODIBENZOFURAN	641	30	21		10	400	2.5E−07	67	9(2)	152
152	13966-29-5	▲URANIUM-234	636	9	6		1◆	600	*N.D.*	0	23(4)	30
153	14269-63-7	▲THORIUM-230	635	11	8		1◆	600	*N.D.*	0	21(4)	28
154	7440-22-4	SILVER	632	374	263	1000		53	7.3E−05	132	145(2)	184
155	67-72-1	HEXACHLOROETHANE	628	42	30	100		178	1.2E+01	269	5(2)	151
156	143-50-0	▲KEPONE	626	3	2	1		600	*N.D.*	0	18(4)	24
157	7778-39-4	▲ARSENIC ACID	625	6	4		1	600	*N.D.*	0	16(4)	21
158	2921-88-2	▲CHLORPYRIFOS	623	8	6	1		600	*N.D.*	0	13(4)	17
159	7784-42-1	▲ARSINE	622	5	4		1	600	*N.D.*	0	14(4)	19
160	14255-04-0	▲LEAD-210	620	4	3		1◆	600	*N.D.*	0	13(4)	17
161	85-01-8	PHENANTHRENE	619	401	282	5000		10	8.9E−05	134	181(2)	193
162	3734-48-3	▲CHLORDENE	619	4	3		1	600	*N.D.*	0	12(4)	16
163	22967-92-6	▲METHYLMERCURY	618	4	3		1	600	*N.D.*	0	11(4)	15
164	10045-97-3	▲CESIUM-137	617	5	4		1◆	600	*N.D.*	0	10(4)	14
165	11104-28-2	AROCLOR 1221	617	19	13	1		600	*N.D.*	0	2(4)	4
166	27304-13-8	▲OXYCHLORDANE	616	4	3		1	600	*N.D.*	0	10(4)	14
167	7784-46-5	▲SODIUM ARSENITE	616	3	2	1		600	*N.D.*	0	10(4)	14
168	56832-73-6	▲BENZOFLUORANTHENE	616	3	2		1	600	*N.D.*	0	10(4)	14
169	13981-16-3	▲PLUTONIUM-238	615	5	4		1◆	600	*N.D.*	0	8(4)	11
170	13981-52-7	▲POLONIUM-210	615	5	4		1◆	600	*N.D.*	0	8(4)	11
171	30402-15-4	▲PENTACHLORODIBENZOFURAN	614	25	18		10	400	3.9E−08	46	2(2)	150
172	7783-06-4	HYDROGEN SULFIDE	612	23	16	100		178	1.0E+01	267	3(2)	151
173	10198-40-0	▲COBALT-60	612	3	2		1◆	600	*N.D.*	0	7(4)	10
174	13966-32-0	▲SODIUM-22	612	3	2		1◆	600	*N.D.*	0	7(4)	10
175	25321-22-6	DICHLOROBENZENE	611	74	52	100		178	4.8E−03	180	1(1)	201
176	129-00-0	PYRENE	611	400	281	5000		10	2.2E−05	118	1(1)	201

Table 1. — Revised Priority List of Hazardous Substances — Continued

Rank	CAS Number	Contaminant Name	Total Pts	NPL Freq	Freq Pts	RQ	TES	Tox Pts	Source Contrib	Conc Pts	Expos Poten	Expos Pts
177	7440-62-2	VANADIUM	610	299	210		1000	53	7.0E−04	158	163(2)	189
178	15117-53-0	▲SULFUR-35	608	3	2		1◆	600	*N.D.*	0	4(4)	6
179	10098-97-2	▲STRONTIUM-90	607	3	2		1◆	600	*N.D.*	0	3(4)	5
180	7440-07-5	PLUTONIUM	604	3	2		1◆	600	*N.D.*	0	1(4)	2
181	15117-48-3	▲PLUTONIUM-239	604	3	2		1◆	600	*N.D.*	0	1(4)	2
182	124-48-1	CHLORODIBROMOMETHANE	604	115	81	100		178	1.9E−04	143	2(1)	202
183	683-53-4	▲BROMODICHLOROETHANE	603	3	2		10	400	*N.D.*	0	1(1)	201
184	13968-55-3	▲URANIUM-233	602	3	2		1◆	600	*N.D.*	0	0(0)	0
185	14797-55-8	NITRATE	602	195	137		1000	53	5.7E−02	208	3(1)	204
186	86-30-6	N-NITROSODIPHENYLAMINE	601	168	118	100		178	1.4E−04	140	66(2)	166
187	541-73-1	1,3-DICHLOROBENZENE	601	133	94	100		178	1.3E−03	165	62(2)	165
188	121-82-4	CYCLOTRIMETHYLENE-TRINITRAMINE (RDX)	599	16	11		100	178	5.9E−02	208	1(1)	201
189	540-59-0	1,2-DICHLOROETHYLENE	585	255	179		1000	53	1.7E−04	141	9(1)	211
190	74-87-3	CHLOROMETHANE	584	126	89	100		178	6.3E−04	157	44(2)	160
191	60-29-7	ETHYL ETHER	583	44	31	100		178	2.6E−03	173	1(1)	201
192	7782-50-5	▲CHLORINE	578	38	27	10		400	*N.D.*	0	7(2)	152
193	95-95-4	2,4,5-TRICHLOROPHENOL	577	36	25	10		400	*N.D.*	0	8(2)	152
194	75-25-2	BROMOFORM	577	101	71	100		178	4.5E−05	127	1(1)	201
195	62-75-9	N-NITROSODIMETHYLAMINE	575	31	22	10		400	*N.D.*	0	14(2)	153
196	606-20-2	2,6-DINITROTOLUENE	573	46	32	100		178	9.0E−04	161	2(1)	202
197	95-47-6	▲O-XYLENE	573	171	120	1000		53	2.6E−02	199	1(1)	201
198	7782-41-4	FLUORINE	572	27	19	10		400	*N.D.*	0	13(2)	153
199	7439-98-7	MOLYBDENUM	572	62	44		100	178	2.0E−02	196	18(2)	154
200	7738-94-5	▲CHROMIC ACID	568	19	13		10	400	*N.D.*	0	19(2)	154
201	1300-21-6	▲DICHLOROETHANE	567	46	32		100	178	4.7E−04	153	3(1)	204
202	30402-14-3	▲TETRACHLORODIBENZOFURAN	567	22	15		10	400	*N.D.*	0	6(2)	151
203	56-38-2	PARATHION	563	17	12	10		400	*N.D.*	0	4(2)	151
204	10588-01-9	▲SODIUM DICHROMATE	559	8	6	10		400	*N.D.*	0	16(2)	154
205	25321-14-6	▲DINITROTOLUENE	559	13	9	10		400	*N.D.*	0	1(2)	150
206	143-33-9	▲SODIUM CYANIDE	558	7	5	10		400	*N.D.*	0	15(2)	154
207	563-12-2	▲ETHION	558	9	6	10		400	*N.D.*	0	7(2)	152
208	100-02-7	4-NITROPHENOL	558	82	58	100		178	1.5E−03	166	25(2)	156
209	108-10-1	METHYL ISOBUTYL KETONE	558	295	208	5000		10	1.2E−04	138	2(1)	202
210	88-89-1	▲PICRIC ACID	556	7	5		10	400	*N.D.*	0	6(2)	151
211	27154-33-2	▲TRICHLOROFLUOROETHANE	556	3	2		10	400	*N.D.*	0	16(2)	154
212	76-01-7	▲PENTACHLOROETHANE	556	8	6	10		400	*N.D.*	0	1(2)	150
213	39765-80-5	▲NONACHLOR, TRANS-	556	8	6		10	400	*N.D.*	0	1(2)	150
214	60-51-5	▲DIMETHOATE	555	6	4	10		400	*N.D.*	0	2(2)	150
215	1563-66-2	▲CARBOFURAN	554	5	4	10		400	*N.D.*	0	1(2)	150
216	7758-98-7	▲CUPRIC SULFATE	554	5	4	10		400	*N.D.*	0	1(2)	150
217	62-73-7	▲DICHLORVOS	554	3	2	10		400	*N.D.*	0	6(2)	151
218	78-11-5	▲PENTAERYTHRITOL TETRANITRATE (PETN)	554	3	2		10	400	*N.D.*	0	6(2)	151
219	133-06-2	▲CAPTAN	554	3	2	10		400	*N.D.*	0	6(2)	151
220	75-44-5	PHOSGENE	553	4	3	10		400	*N.D.*	0	2(2)	150
221	115-32-2	▲DICOFOL	553	4	3	10		400	*N.D.*	0	1(2)	150
222	298-02-2	PHORATE	553	4	3	10		400	*N.D.*	0	1(2)	150
223	300-76-5	▲NALED	553	4	3	10		400	*N.D.*	0	1(2)	150
224	78-00-2	▲TETRAETHYL LEAD	552	3	2	10		400	*N.D.*	0	1(2)	150
225	7440-05-3	▲PALLADIUM	552	3	2		10	400	*N.D.*	0	1(2)	150
226	51207-31-9	▲TETRACHLORODIBENZOFURAN	543	20	14		10	400	6.6E−08	52	60(4)	77
227	36088-22-9	▲PENTACHLORODIBENZO-P-DIOXIN	542	24	17		10	400	*N.D.*	0	98(4)	125
228	50-00-0	FORMALDEHYDE	541	26	18	100		178	1.1E−02	189	23(2)	155
229	10061-01-5	1,3-DICHLOROPROPENE, CIS-	540	57	40	100		178	1.2E−03	164	35(2)	158
230	120-12-7	ANTHRACENE	539	293	206	5000		10	1.6E−04	141	136(2)	182
231	1634-04-4	▲METHYL-T-BUTYL-ETHER	539	6	4		100	178	5.8E−04	156	1(1)	201
232	7440-36-0	ANTIMONY	536	315	222	5000		10	4.3E−05	126	119(2)	178
233	106-44-5	CRESOL, PARA-	535	215	151		1000	53	6.5E−04	157	102(2)	174
234	100-42-5	STYRENE	525	182	128	1000		53	1.9E−04	143	1(1)	201
235	75-69-4	TRICHLOROFLUOROMETHANE	523	193	136	5000		10	3.1E−03	175	2(1)	202
236	117-84-0	DI-N-OCTYL PHTHALATE	521	257	181	5000		10	5.6E−05	129	1(1)	201

Table 1. — Revised Priority List of Hazardous Substances — Continued

Rank	CAS Number	Contaminant Name	Total Pts	NPL Freq	Freq Pts	RQ	TES	Tox Pts	Source Contrib	Conc Pts	Expos Poten	Expos Pts
237	78-87-5	1,2-DICHLOROPROPANE	519	180	127	1000		53	8.1E−05	133	5(1)	206
238	94-75-7	2,4-D ACID	515	39	27	100		178	7.8E−04	159	3(2)	151
239	86-73-7	FLUORENE	512	266	187	5000		10	1.4E−04	139	109(2)	176
240	12002-48-1	TRICHLOROBENZENE	511	29	20		100	178	2.5E−02	199	89(4)	114
241	84-66-2	DIETHYL PHTHALATE	509	223	157	1000		53	5.5E−05	129	88(2)	171
242	16984-48-8	▲FLUORIDE	508	132	93		1000	53	2.7E−02	199	55(2)	163
243	120-83-2	2,4-DICHLOROPHENOL	507	64	45	100		178	7.2E−05	132	9(2)	152
244	479-45-8	TRINITROPHENYLMETHYL-NITRAMINE	504	10	7		100	178	1.5E−03	167	11(2)	153
245	95-57-8	2-CHLOROPHENOL	493	80	56	100		178	7.2E−06	106	14(2)	153
246	65-85-0	BENZOIC ACID	490	213	150	5000		10	1.0E−03	162	74(2)	168
247	108-38-3	▲M-XYLENE	469	136	96	1000		53	2.3E−05	119	1(1)	201
248	109-99-9	TETRAHYDROFURAN	469	83	58	1000		53	6.0E−04	156	1(1)	201
249	106-42-3	▲P-XYLENE	469	121	85	1000		53	5.7E−05	129	1(1)	201
250	67-63-0	ISOPROPANOL	462	61	43		1000	53	6.8E−02	210	28(2)	157
251	86-74-8	▲CARBAZOLE	461	17	12		100	178	2.5E−05	120	4(2)	151
252	207-08-9	BENZO(K)FLUORANTHENE	458	253	178	5000		10	3.2E−06	96	99(2)	173
253	156-59-2	1,2-DICHLOROETHENE, CIS-	455	93	65		1000	53	7.0E−05	132	4(1)	205
254	25323-30-2	▲DICHLOROETHYLENE	454	68	48		1000	53	2.8E−04	147	5(1)	206
255	608-93-5	PENTACHLOROBENZENE	454	10	7	10		400	*N.D.*	0	36(4)	47
256	7440-42-8	BORON	454	124	87		5000	10	5.0E−04	154	2(1)	202
257	90-12-0	▲1-METHYLNAPHTHALENE	450	29	20		100	178	4.4E−06	100	6(2)	151
258	58-90-2	▲2,3,4,6-TETRACHLOROPHENOL	447	4	3	10		400	*N.D.*	0	34(4)	44
259	106-99-0	1,3-BUTADIENE	441	7	5		10	400	*N.D.*	0	28(4)	36
260	4901-51-3	▲2,3,4,5-TETRACHLOROPHENOL	436	3	2		10	400	*N.D.*	0	26(4)	34
261	132-64-9	DIBENZOFURAN	436	181	127		5000	10	7.0E−05	132	72(2)	167
262	108-20-3	▲ISOPROPYL ETHER	435	12	8		1000	53	2.4E−03	172	1(1)	201
263	95-48-7	CRESOL, ORTHO-	434	156	110		5000	10	3.8E−04	151	58(2)	164
264	75-27-4	BROMODICHLOROMETHANE	433	160	113	5000		10	7.8E−06	107	3(1)	204
265	68-12-2	DIMETHYL FORMAMIDE	429	15	11		100	178	1.7E−02	194	36(4)	47
266	510-15-6	▲CHLOROBENZILATE	427	3	2	10		400	*N.D.*	0	19(4)	25
267	1336-35-2	▲CHLORINATED PHENOL	426	3	2		10	400	*N.D.*	0	18(4)	24
268	140-57-8	ARAMITE	423	3	2		10	400	*N.D.*	0	16(4)	21
269	7440-28-0	THALLIUM	421	156	110	1000		53	3.8E−06	98	43(2)	160
270	271-89-6	2,3-BENZOFURAN	421	13	9		100	178	9.4E−07	82	6(2)	151
271	137-26-8	▲THIRAM	421	3	2	10		400	*N.D.*	0	14(4)	19
272	98-95-3	NITROBENZENE	417	71	50	1000		53	7.9E−04	159	20(2)	155
273	7778-54-3	▲CALCIUM HYPOCHLORITE	416	4	3	10		400	*N.D.*	0	10(4)	14
274	5103-73-1	▲NONACHLOR, CIS-	415	4	3		10	400	*N.D.*	0	9(4)	12
275	191-24-2	BENZO(G,H,I)PERYLENE	415	225	158	5000		10	5.1E−07	76	90(2)	171

CAS = Chemical Abstract Service; **Pts** = Points; **NPL** = National Priorities List; **Freq** = Frequency; **RQ** = Reportable Quantity; **TES** = Toxicity/Environmental Score; **Tox** = Toxicity; **Contrib** = Contribution; **Conc** = Concentration; **Expos** = Exposure; **Poten** = Potential; **N.D.** = No Data.

▲ Indicates substance not on previous Priority Lists of Hazardous Substances.

◆ Final RQs (in Curies) have been established for radionuclides (54 FR 22524, May 24, 1989). To provide consistency in the algorithm, each radionuclide has been assigned a TES of 1.

(1) Indicates exposure to the substance (200-300 points).

(2) Indicates exposure to media containing the substance (150-225 points).

(3) Indicates potential exposure to the substance (100-175 points).

(4) Indicates potential exposure to media containing the substance (1-125 points).

Table 2. — Additional 56 Substances (Total Points 415-300)

Rank	CAS Number	Contaminant Name	Total Pts	NPL Freq	Freq Pts	RQ	TES	Tox Pts	Source Contrib	Conc Pts	Expos Poten	Expos Pts
276	74-95-3	▲DIBROMOMETHANE	415	14	10	1000		53	3.4E−04	150	2(1)	202
277	2104-64-5	▲ETHYL P-NITROPHENYL PHENYLPHOSPHOROTHIOATE (EPN)	413	3	2		10	400	*N.D.*	0	8(4)	11
278	765-34-4	▲GLYCIDYLALDEHYDE	411	3	2	10		400	*N.D.*	0	6(4)	9
279	7440-33-7	▲TUNGSTEN	411	3	2		10	400	*N.D.*	0	6(4)	9
280	35822-46-9	▲1,2,3,4,6,7,8-HEPTACHLORO-DIBENZO-P-DIOXIN	407	3	2		10	400	*N.D.*	0	3(4)	5
281	74-90-8	▲HYDROCYANIC ACID	405	4	3	10		400	*N.D.*	0	1(4)	2
282	208-96-8	ACENAPHTHYLENE	401	177	125	5000		10	4.3E−06	100	72(2)	167
283	1319-77-3	CRESOL	401	47	33	1000		53	1.1E−03	162	10(2)	152
284	62-53-3	ANILINE	398	45	32	5000		10	3.4E−02	202	19(2)	154
285	75-45-6	CHLORODIFLUOROMETHANE	390	15	11		100	178	*N.D.*	0	1(1)	201
286	77-78-1	▲DIMETHYL SULFATE	388	5	4	100		178	3.6E−03	177	23(4)	30
287	7440-32-6	TITANIUM	387	75	53		100	178	*N.D.*	0	28(2)	157
288	131-11-3	DIMETHYL PHTHALATE	386	96	68	5000		10	4.8E−04	153	21(2)	155
289	110-86-1	PYRIDINE	374	12	8	1000		53	1.0E−03	162	2(2)	150
290	78-59-1	ISOPHORONE	373	138	97	5000		10	5.8E−06	103	53(2)	163
291	99-65-0	1,3-DINITROBENZENE	371	12	8		100	178	2.0E−03	170	11(4)	15
292	302-04-5	▲THIOCYANATE	371	4	3		1000	53	1.3E−03	165	1(2)	150
293	10061-02-6	1,3-DICHLOROPROPENE, TRANS-	363	43	30	100		178	*N.D.*	0	21(2)	155
294	88-75-5	2-NITROPHENOL	360	44	31	100		178	*N.D.*	0	5(2)	151
295	67-56-1	METHANOL	360	50	35	5000		10	7.6E−04	159	26(2)	156
296	1321-94-4	▲METHYLNAPHTHALENE	354	35	25		100	178	*N.D.*	0	5(2)	151
297	93-72-1	2,4,5-TP ACID (SILVEX)	351	27	19	100		178	*N.D.*	0	15(2)	154
298	111-91-1	BIS(2-CHLOROETHOXY) METHANE	347	29	20	1000		53	3.2E−05	123	5(2)	151
299	7440-65-5	▲YTTRIUM	347	25	18		100	178	*N.D.*	0	7(2)	152
300	7664-39-3	HYDROGEN FLUORIDE	346	21	15	100		178	*N.D.*	0	15(2)	154
301	121-75-5	MALATHION	345	20	14	100		178	*N.D.*	0	13(2)	153
302	110-82-7	▲CYCLOHEXANE	345	28	20	1000		53	2.8E−05	121	4(2)	151
303	93-76-5	2,4,5-T	343	24	17	1000		53	3.2E−05	123	3(2)	151
304	107-13-1	ACRYLONITRILE	342	20	14	100		178	*N.D.*	0	1(2)	150
305	298-00-0	METHYL PARATHION	340	17	12	100		178	*N.D.*	0	2(2)	150
306	1333-82-0	▲CHROMIUM (VI) TRIOXIDE	336	7	5		100	178	*N.D.*	0	15(2)	154
307	25168-05-2	▲CHLOROTOLUENE	336	11	8		100	178	*N.D.*	0	1(2)	150
308	63-25-2	CARBARYL	335	9	6	100		178	*N.D.*	0	4(2)	151
309	26952-23-8	▲DICHLOROPROPENE	335	10	7	100		178	*N.D.*	0	1(2)	150
310	563-80-4	▲METHYL ISOPROPYL KETONE	334	14	10		5000	10	1.4E−05	113	1(1)	201
311	28804-88-8	▲DIMETHYLNAPHTHALENE	334	7	5		100	178	*N.D.*	0	4(2)	151
312	1317-36-8	▲LEAD OXIDE	334	8	6		100	178	*N.D.*	0	1(2)	150
313	88-85-7	DINOSEB	334	6	4	1000		53	4.4E−05	126	1(2)	150
314	107-18-6	▲ALLYL ALCOHOL	334	6	4	100		178	*N.D.*	0	6(2)	151
315	195-19-7	▲BENZOPHENANTHRENE	334	6	4		100	178	*N.D.*	0	6(2)	151
316	8007-45-2	▲COAL TAR	333	7	5		100	178	*N.D.*	0	1(2)	150
317	28652-77-9	▲TRIMETHYL NAPHTHALENE	332	5	4		100	178	*N.D.*	0	1(2)	150
318	563-54-2	▲1,2-DICHLOROPROPENE, TRANS-	332	4	3		100	178	*N.D.*	0	3(2)	151
319	205-82-3	▲BENZO(J)FLUORANTHENE	331	4	3		100	178	*N.D.*	0	2(2)	150
320	7718-54-9	▲NICKEL CHLORIDE	331	4	3	100		178	*N.D.*	0	2(2)	150

Table 2. — Additional 56 Substances (Total Points 415-300) — Continued

Rank	CAS Number	Contaminant Name	Total Pts	NPL Freq	Freq Pts	RQ	TES	Tox Pts	Source Contrib	Conc Pts	Expos Poten	Expos Pts
321	75-08-1	▲ETHANETHIOL	331	4	3		100	178	*N.D.*	0	1(2)	150
322	22781-23-3	▲FICAM	331	3	2		100	178	*N.D.*	0	3(2)	151
323	150-68-5	▲MONURON	331	3	2		100	178	*N.D.*	0	2(2)	150
324	74-89-5	▲METHYLAMINE	330	3	2	100		178	*N.D.*	0	1(2)	150
325	75-04-7	▲ETHYLAMINE	330	3	2	100		178	*N.D.*	0	1(2)	150
326	103-33-3	▲AZOBENZENE	330	3	2		100	178	*N.D.*	0	1(2)	150
327	7440-06-4	▲PLATINUM	330	3	2		100	178	*N.D.*	0	1(2)	150
328	7440-56-4	▲GERMANIUM	330	3	2		100	178	*N.D.*	0	1(2)	150
329	13814-96-5	▲LEAD FLUOROBORATE	330	3	2	100		178	*N.D.*	0	1(2)	150
330	96-18-4	1,2,3-TRICHLOROPROPANE	330	19	13		5000	10	5.6E−06	103	3(1)	204
331	75-71-8	DICHLORODIFLUOROMETHANE	315	65	46	5000		10	4.7E−06	101	34(2)	158

See Table 1 for Legend

Table 3. — Previously Listed Substances Not Included on the Revised Priority List

CAS Number	Substance Name	CAS Number	Substance Name
(none)	CHLORODIBENZODIOXINS	108-39-4	CRESOL, META-
(none)	CHLORODIBENZOFURANS	108-60-1	BIS(2-CHLORO-1-METHYLETHYL)ETHER
51-75-2	2,2'-DICHLORO-N-METHYLDIETHYLAMINE	108-94-1	CYCLOHEXANONE
59-50-7	P-CHLORO-M-CRESOL	109-06-8	2-METHYLPYRIDINE
64-17-5	ETHANOL	109-66-0	N-PENTANE
71-36-3	1-BUTANOL	110-00-9	FURAN
74-83-9	BROMOMETHANE	110-75-8	2-CHLOROETHYL VINYL ETHER
74-93-1	METHYL MERCAPTAN	111-65-9	OCTANE
74-97-5	BROMOCHLOROMETHANE	121-69-7	DIMETHYLANILINE
75-21-8	ETHYLENE OXIDE	123-42-2	DIACETONE ALCOHOL
75-43-4	DICHLOROFLUOROMETHANE	123-86-4	BUTYL ACETATE
76-13-1	1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE	123-91-1	1,4-DIOXANE
77-73-6	DICYCLOPENTADIENE	141-78-6	ETHYL ACETATE
79-09-4	PROPANOIC ACID	142-82-5	N-HEPTANE
79-20-9	METHYL ACETATE	505-60-2	MUSTARD GAS
80-62-6	METHYL METHACRYLATE	542-88-1	BIS(CHLOROMETHYL) ETHER
87-61-6	1,2,3-TRICHLOROBENZENE	622-97-9	P-METHYL STYRENE
88-74-4	2-NITROANILINE	637-50-3	PROPENYLBENZENE
92-52-4	BIPHENYL	1912-24-9	ATRAZINE
95-94-3	1,2,4,5-TETRACHLOROBENZENE	2385-85-5	MIREX
98-01-1	FURFURAL	7005-72-3	4-CHLOROPHENYL PHENYL ETHER
98-82-8	CUMENE	7440-24-6	STRONTIUM
99-09-2	3-NITROANILINE	7446-09-5	SULFUR DIOXIDE
99-99-0	4-NITROTOLUENE	7647-01-0	HYDROCHLORIC ACID
100-01-6	4-NITROANILINE	7664-38-2	PHOSPHORIC ACID
100-44-7	BENZYL CHLORIDE	7664-93-9	SULFURIC ACID
100-51-6	BENZYL ALCOHOL	7681-49-4	SODIUM FLUORIDE
101-55-3	1-BROMO-4-PHENOXY BENZENE	7697-37-2	NITRIC ACID
103-65-1	N-PROPYL BENZENE	7726-95-6	BROMINE
106-47-8	4-CHLOROANILINE	14797-65-0	NITRITE
106-48-9	4-CHLOROPHENOL	25154-55-6	NITROPHENOL
107-21-1	ETHYLENE GLYCOL	26471-62-5	TOLUENE DIISOCYANATE
107-92-6	BUTANOIC ACID	39638-32-9	BIS(2-CHLOROISOPROPYL)ETHER
108-05-4	VINYL ACETATE		

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October 17, 1991

Part VI

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry

Identification of Priority Data Needs for 38 Priority Hazardous Substances; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-42]

Identification of Priority Data Needs for 38 Priority Hazardous Substances

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Request for public comments on the identification of priority data needs for 38 priority hazardous substances.

SUMMARY: This notice announces the initiation of the ATSDR Substance-Specific Applied Research Program as mandated by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by announcing for public comment the priority data needs for 38 hazardous substances. The exposure and toxicity priority data needs contained in this notice have been identified from information gaps via a Decision Guide that was published in the **Federal Register** at 54 FR 37618, September 11, 1989. The priority data needs represent essential information required by ATSDR and State agencies to perform public health assessments of persons at risk of exposure to substances released from hazardous waste sites. Research to fill these data needs will contribute to determining the types and/or levels of exposure that may present significant risks of adverse health effects in humans exposed to the subject substances.

The priority data needs identified in this notice reflect the opinion of the Agency, in consultation with other federal programs, of the research necessary for fulfilling its statutory mandate under CERCLA and are not intended to represent the priority data needs for any other program.

Consistent with section 104(i)(12) of CERCLA, as amended (42 U.S.C. 9612) nothing in this research program shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority of the President, the Administrator of ATSDR, or the Administrator of EPA under any other provision of law, including TSCA and FIFRA, or the response and abatement authorities of CERCLA.

In initiating this research program, the Agency has worked with other federal programs to determine common substance-specific data needs, and mechanisms to implement research, i.e., via the Toxic Substances Control Act (TSCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), private sector voluntarism, or through the direct use of CERCLA funds. Government funded projects that involve the collection of information from 10 or more respondents will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Overall, data generated from this research program will lend support to others involved in human risk assessments involving these 38 substances by reducing inherent scientific uncertainties.

The 38 substances, which were selected from ATSDR's List of Priority Hazardous Substances (52 FR 12866, April 17, 1987), are aldrin/dieldrin, arsenic, benzene, beryllium, cadmium, carbon tetrachloride, chloroethane, chloroform, chromium, cyanide, p,p'-DDT,DDE,DDD, di(2-ethylhexyl)phthalate, lead, mercury, methylene chloride, nickel, polychlorinated biphenyl compounds, polycyclic aromatic hydrocarbons (includes 15 substances), selenium, tetrachloroethylene, toluene, trichloroethylene, vinyl chloride, and zinc.

The priority data needs for these 38 substances are presented below. Comments from the public are invited on individual data needs. After consideration of comments received, the final priority data needs for each substance will be published and a research program will be initiated to fill the data needs.

Private sector organizations, that agree with the priority of the data need, may volunteer to conduct research to fill specific priority data needs identified in this notice by indicating their interest during this public comment period. A CERCLA Substance-Specific Applied Research Program Committee comprised of scientists from ATSDR, the National Toxicology Program (NTP), and the Environmental Protection Agency (EPA) will review all voluntary research efforts proposed.

The substance-specific priority data needs were based on and determined from information in corresponding ATSDR Toxicological Profiles. Background technical information and justification for the priority data needs identified in this notice is contained in Priority Data Needs documents and the ATSDR Cross-Substance Priorities document. These documents are available for review by writing to the ATSDR at the address listed in the **ADDRESSES** section of this notice.

DATES: Comments concerning this notice must be received by January 15, 1992.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR-42 and should be submitted to the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road NE., Atlanta, Georgia 30333. Requests for Priority Data Needs documents, or the ATSDR Cross-Substance Priorities document, should be addressed similarly.

Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: The Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road NE., Atlanta, Georgia 30333. Telephone: 404-639-6001.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9604 (i)), as amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499), requires that ATSDR: (1) Develop jointly with EPA a list of hazardous substances found at National Priorities List (NPL) sites (in order of priority), (2) prepare Toxicological Profiles of these substances, and (3) assure the initiation of a research program to fill identified priority data needs associated with the substances.

This ATSDR Substance-Specific Applied Research Program is directed to supply additional information necessary (i.e., priority data needs) for ATSDR to perform comprehensive public health assessments for populations living in the vicinity of hazardous waste sites. This link between research and public health assessments, and the process for distilling priority data needs for ranked hazardous substances from information gaps found in associated ATSDR Toxicological Profiles, is described in the ATSDR Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles (54 FR 37618, September 11, 1989). (The relationship between information gaps and priority data needs is shown in Figure 1.) Briefly, this guide identified categories of exposure and toxicity data needs necessary to assess the four basic steps involved in performing public health assessments.

Exposure Assessment—(1) Environmental Pathways, (2) Human Contact
Hazard Identification—(3) Toxicokinetics, (4) Physiologic/Health Effect

The linkages between the release of a hazardous substance in the environment and impact on human health can only be fully determined when the scientific underpinnings for these four basic steps are available. In the absence of these data, the public health assessment process necessarily involves using certain assumptions. Filling the data needs related to these four steps will lead to reduced uncertainty in such assumptions. The relationships between these four steps and priority data needs are as follows:

Exposure Assessment

Of importance to ATSDR in meeting its statutory mandates is the need to make reasonable scientific assessments based on levels of contaminants found in the environment at or around CERCLA sites. In order to accomplish this goal, a major objective of this research program is to establish linkages between levels of contaminants in the environment and levels in tissue/target organs that are associated with an adverse health effect. ATSDR understands this requires (1) the development and validation of sensitive analytical methods for measuring levels of contaminants in environmental media; (2) information on background levels in the general environment; (3) information on contaminant levels at or near hazardous waste sites; and (4) knowledge of contaminants' environmental fate. Further, extending environmental contaminant levels to human tissues concentrations requires (1) the development and validation of sensitive analytical methods for contaminant detection in human tissues; (2) bioavailability data; (3) information on background levels in non-exposed populations; and (4) information on levels in tissues for populations living at or near hazardous waste sites. Thus, a major priority data need for this data needs research program will be to collect (where appropriate), evaluate, and interpret data for both environmental media and human tissues for environments and populations around hazardous waste sites.

Hazard Identification

Toxicology and pharmacokinetic testing of priority hazardous substances is vital in order to identify target organs and to establish tissue dosimetry. This information is critical in completing the association among levels of these substances in the environment, levels in human tissues, and levels associated with adverse health effects. When information is lacking to identify the most sensitive target organs (and doses associated with these effects) following acute, intermediate and chronic exposures to each substance, it generally will become a priority data need; and the identified health effect studies will be conducted via the most relevant exposure route(s) representative of conditions at hazardous waste sites. Currently, ATSDR does not extrapolate toxicity data across exposure routes or exposure durations. However, ATSDR acknowledges that such extrapolations may be done on a substance-by-substance basis after toxicokinetics information has been established.

Once linkages have been established across exposure routes, between levels in the environment, and levels in specific human tissues associated with health effects, it should be feasible to develop strategies for mitigation of these effects. Mechanistic studies can be undertaken to elucidate the pathophysiology of the health effects; leading ultimately to the development of clinical methods for mitigating any adverse health effects of exposure to persons living around hazardous waste sites.

The final point to be noted in the development of this applied research program is the heavy reliance on the collection of quality human data to validate the substance-specific exposure and toxicity findings evidenced from animal studies and equivocal human studies. This information will be obtained by conducting exposure and health effects studies, and through the establishment of subregistries within the framework of ATSDR's National Exposure Registry.

Implementation of Substance-Specific Research Program

CERCLA, as amended as section 104(i)(5)(D), states that it is the sense of Congress that the costs for conducting this research program be borne by the manufacturers and processors of the hazardous substances under TSCA/FIFRA, or by cost recovery from responsible parties under CERCLA. ATSDR interprets the Congressional intent to mean that portions of this CERCLA Substance-Specific Applied Research Program will be conducted via regulatory mechanisms, private sector voluntarism, and through the direct use of CERCLA funds. Moreover, CERCLA, as amended, requires that ATSDR consider recommendations of the Interagency Testing Committee (ITC) established under section 4(e) of the Toxic Substances Control Act on the types of research to be done. ATSDR is an active participant in this committee; none of the proposed 38 substances are being considered by the ITC at this time.

A. TSCA/FIFRA

In the development and implementation of the research program, ATSDR and EPA have established procedures to identify priority data needs of mutual interest to federal programs. Generally, this begins during, or prior to, the finalization of the priority data needs. These data needs will be filled through a program of toxicological testing under TSCA or FIFRA. This portion of the research will be conducted according to established TSCA/FIFRA procedures and guidelines. This testing will fulfill more than one federal program's need. It is ATSDR's intent to ensure that data needs pursued under TSCA/FIFRA administrative arrangements are subject to independent scientific peer review.

B. Private Sector Voluntarism

The ATSDR encourages private sector voluntary conduct of research on select priority data needs. Private sector organizations, that agree with the priority of the data need, may volunteer to conduct research to fill specific priority data needs identified in this notice by indicating their interest during this public comment period. Concept proposals (1–2 pages), not detailed study designs or protocols are solicited at this time. A review committee comprised of scientists from ATSDR, the National Toxicology Program (NTP), and the Environmental Protection Agency (EPA) will review the voluntary efforts proposed. Based on the review committee's recommendations, ATSDR will determine which, and how, specific voluntary research projects will be pursued with volunteering organizations (Figure 2). It is the intent of ATSDR to only enter into voluntary research projects in ways that lead to high quality scientific work. This would include the necessity of peer review of study protocols and results.

C. CERCLA

Those priority data needs that are not filled by TSCA/FIFRA or initial voluntarism will be considered for funding by ATSDR through its CERCLA budget. A large portion of this research program is envisioned to be unique to CERCLA, e.g., on substances not regulated by other programs or on research needs specific to public health assessments. Mechanisms to fill these

priority data needs may include a second call for voluntarism. Again, scientific peer review of study protocols and results would occur for all research conducted under this auspice.

Substance-Specific Priority Data Needs

The priority data needs identified in Table 1 are considered available for conduct at the discretion of ATSDR and/or EPA via mechanisms that include TSCA/FIFRA, private sector voluntarism or CERCLA. These exposure and toxicity priority data needs are divided into Groups A and B for further refinement. Group A priority data needs are the highest ranked priority data needs while Group B are priority data needs that will be filled pending the results of Group A testing or that are not of the most urgent public health concern to ATSDR at the present time. No hierarchies are set among any one substance's Group A or Group B priority data needs. Reassignments between priority data need groups will be considered by ATSDR on a substance-by-substance basis pending the collection and evaluation of additional data.

Additional information on Group A and B data needs can be obtained in the ATSDR document Cross-Substance Priorities. This document is available for review by writing to ATSDR at the address listed in the **ADDRESSES** section of this notice.

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS

Group A	Group B
Aldrin/Dieldrin:	
Epidemiological studies on the health effects of aldrin and dieldrin (Special emphasis endpoints include: cancer, immunotoxicity, neurotoxicity, and reproductive and developmental toxicity).	Bioavailability from soil.
Dose-response data in animals for intermediate-duration oral exposure.	
Arsenic:	
Comparative toxicokinetic studies to determine if an appropriate animal species can be identified.	Half-lives in surface water, groundwater. Bioavailability from soil.
Benzene:	
Epidemiological studies on the health effects of benzene (Special emphasis endpoints include: immunotoxicity, and reproductive and developmental toxicity).	None.
Dose-response data in animals for acute- and intermediate-duration oral exposure. The subchronic study should include an extended reproductive organ histopathology.	
2-species developmental toxicity study via oral exposure.	
Neurotoxicology battery of tests via oral exposure.	
Beryllium:	
Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology.	Environmental fate in air. Factors affecting bioavailability in air.
2-species developmental toxicity study via inhalation exposure.	Immunotoxicology battery of tests following oral exposure.
Cadmium:	
Epidemiological studies on the health effects of cadmium (Special emphasis endpoints include: cancer, renal toxicity, hepatotoxicity, immunotoxicity, neurotoxicity, respiratory toxicity, reproductive and developmental toxicity, and dose-response data for less than lifetime exposure).	None.
Carbon Tetrachloride:	
Epidemiological studies on the health effects of CCl_4 (Special emphasis endpoints include: cancer, immunotoxicity, neurotoxicity, and reproductive and developmental toxicity).	Immunotoxicology battery of tests via oral exposure. Half-life in soil.
Dose-response data in animals for chronic oral exposure. The study should include extended reproductive organ and nervous tissue (and demeanor) histopathology.	
Chloroethane:	
Epidemiological studies on the health effects of chloroethane (Special emphasis endpoints include: immunotoxicity, neurotoxicity, and reproductive toxicity).	Dose-response data in animals for chronic inhalation exposures. The study should include an evaluation of nervous system (and behavior) tissues.
Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an evaluation of immune and nervous system (and behavior, demeanor) tissues, and extended reproductive organ histopathology.	
Comparative toxicokinetic studies (across route/species).	
Chloroform:	
Epidemiological studies on the health effects of chloroform (Special emphasis endpoints include: cancer, immunotoxicity, neurotoxicity, and reproductive and developmental toxicity).	None.
Dose-response data in animals for intermediate-duration oral exposure.	
Chromium:	
Dose-response data in animals for acute-duration exposure to chromium (VI) and (III) via oral exposure and for intermediate-duration exposure to chromium (VI) via oral exposure.	Immunotoxicology battery of tests following oral exposure to chromium (III) and (VI). 2-species developmental toxicity study via oral exposure to chromium (III) and (VI).
Multigeneration reproductive toxicity study via oral exposure to chromium (III) and (VI).	
Cyanide:	
Epidemiological studies on the health effects of cyanide (Special emphasis endpoints include: adverse effects on the thyroid gland, and reproductive and developmental toxicity).	Evaluation of the environmental fate of cyanide in soil.

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS—Continued

Group A	Group B
Dose-response data in animals for acute- and intermediate-duration exposures via inhalation. The subchronic study should include extended reproductive organ histopathology and evaluation of neurobehavioral and neuropathological endpoints.	
2-Species developmental toxicity study via oral exposure.	
p,p'-DDT, DDD, DDE:	
Epidemiological studies on the health effects of DDT, DDD and DDE (Special emphasis endpoints include: cancer, immunotoxicity, neurotoxicity, and reproductive and developmental toxicity).	Bioavailability and bioaccumulation from soil.
Dose-response data in animals for chronic-duration oral exposure.	
Comparative toxicokinetic study (across routes/species).	
Di(2-ethylhexyl)phthalate:	
Epidemiological studies on the health effects of DEHP (Special emphasis endpoints include: cancer and reproductive and developmental toxicity).	None.
Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathological evaluation of the immunologic and neurologic systems.	
Multigeneration reproductive toxicity study via oral exposure.	
Comparative toxicokinetic studies (Studies designed to examine how mammals metabolize and distribute DEHP as compared to rodents via oral exposure).	
Lead:	
Epidemiological studies on the health effects of lead (Special emphasis endpoints include: cancer, hematopoietic toxicity, neurotoxicity, immunotoxicity, reproductive and developmental toxicity, and dose-response data).	None.
Mechanistic studies on the neurotoxic effects of lead.	
Mercury:	
Epidemiological studies on the health effects of mercury (Special emphasis endpoints include: cancer, immunotoxicity, neurotoxicity, and reproductive and developmental toxicity).	Immunotoxicology battery of tests via oral exposure. Carcinogenicity testing (2 year bioassay) via oral exposure.
Multigeneration reproductive toxicity study via oral exposure.	
Methylene Chloride:	
Dose-response data in animals for acute- and intermediate-duration oral exposure. The subchronic study should include extended reproductive organ histopathology, neuropathology and demeanor, and immunopathology.	None.
2-species developmental toxicity study via the oral route.	
Nickel:	
Epidemiological studies on the health effects of nickel (Special emphasis endpoints include: cancer, immunotoxicity, neurotoxicity, and reproductive and developmental toxicity).	Neurotoxicology battery of tests via oral exposure. Bioavailability of nickel from soil.
Dose-response data in animals for acute- and intermediate-duration oral exposures.	
Polychlorinated Biphenyl Compounds:	
Epidemiological studies on the health effects of PCBs (Special emphasis endpoints include: cancer, immunotoxicity, gastrointestinal toxicity, thyroid toxicity, hematopoietic toxicity, and reproductive and developmental toxicity).	Photodegradation of PCBs in air and water. Bioavailability of PCBs in air, water and soil. Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology.
Dose-response data in animals for acute- and intermediate-duration oral exposures.	
Polycyclic Aromatic Hydrocarbons (includes 15 substances):	
Epidemiological studies on the health effects of PAHs (Special emphasis endpoints include: cancer, immunotoxicity, reproductive and developmental toxicity, and adverse skin effects).	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology.
Dose-response data in animals for intermediate duration oral exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology.	Mechanistic studies on nonalternant PAHs, on how mixtures of PAHs can influence the ultimate activation of PAHs, and on how PAHs affect rapidly proliferating tissues.
2-Species developmental toxicity study via inhalation or oral exposure.	
Selenium:	
Epidemiological studies on the health effects of selenium (Special emphasis endpoints include: cancer, immunotoxicity, reproductive and developmental toxicity, hepatotoxicity and adverse skin effects).	Immunotoxicology battery of tests via oral exposure.
Dose-response data in animals for acute-duration oral exposure.	
Tetrachloroethylene:	
Epidemiological studies on the health effects of tetrachloroethylene (Special emphasis endpoints include: cancer, immunotoxicity, reproductive and developmental toxicity, hepatotoxicity and neurotoxicity).	Dose-response data in animals for chronic-duration oral exposure, including neuropathology and demeanor, and immunopathology. 2-Species developmental toxicity study via oral exposure.
Dose-response data in animals for acute-duration oral exposure, including neuropathology and demeanor, and immunopathology.	
Multigeneration reproductive toxicity study via oral exposure.	
Toluene:	
Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopatholoical evaluation of the immune system.	Mechanism of toluene-induced neurotoxicity.
Comparative toxicokinetic studies (Characterization of absorption, distribution, and excretion via oral exposure).	
Neurotoxicology battery of tests via oral exposure.	

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS—Continued

Group A	Group B
Trichloroethylene:	
Epidemiological studies on the health effects of trichloroethylene (Special emphasis endpoints include: cancer, developmental toxicity, and neurotoxicity).	Neurotoxicology battery of tests via the oral route.
Dose-response data in animals for acute-duration oral exposure.	Immunotoxicology battery of tests via the oral route.
Vinyl Chloride:	
Epidemiological studies on the health effects of vinyl chloride (Special emphasis endpoints include: cancer, immunotoxicity, reproductive and developmental toxicity, hepatotoxicity, and neurotoxicity).	Dose-response data in animals for chronic-duration inhalation exposure.
Dose-response data in animals for acute-duration inhalation exposure.	Mitigation of vinyl chloride-induced toxicity.
Multigeneration reproductive toxicity study via inhalation.	2-species developmental toxicity study via inhalation.
Zinc:	
Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathological evaluation of the immunologic and neurological systems.	None.
Multigeneration reproductive toxicity study via oral exposure.	
Carcinogenicity testing (2-year bioassay) via oral exposure.	

As previously stated ATSDR considers that a portion of this research will be most appropriately conducted utilizing CERCLA data and resources. Toward this end, ATSDR has identified particular data needs that will be considered for implementation by ATSDR programs. These priority data needs fall into both the exposure and toxicity data needs categories.

A major exposure priority data need for this applied research program will be to collect, evaluate, and interpret data from contaminated media around hazardous waste sites; and this has been identified by ATSDR as a priority data need for all 38 substances. However, ATSDR realizes that a large amount of information has already been collected through individual state programs and the EPA's CERCLA activities. ATSDR will therefore evaluate the extant information from these programs in order to help fill data needs on substance-specific exposures.

ATSDR's role as a public health agency addressing environmental health is, where appropriate, to collect human data to validate substance-specific exposure and toxicity findings. This information will be obtained by ATSDR through the conduct of exposure and health effects studies, and through the establishment and use of substance-specific subregistries of persons potentially exposed to these substances within the Agency's National Exposure Registry. When a subregistry, or a human exposure study is identified as a priority data need, the responsible ATSDR program will consider this recommendation and determine its feasibility, dependent on identifying appropriate populations and funding (Table 2). These priority data needs may be reclassified following considerations of feasibility, and any reclassification will be published in the **Federal Register.**

ATSDR acknowledges that the conduct of human studies to determine possible linkages between exposure to hazardous substances and human health effects may be accomplished other than by Agency programs or under other ATSDR-sponsored auspices. Toward that end, the private sector and other governmental programs are encouraged to use ATSDR's priority data needs to plan their research activities, i.e., to identify appropriate populations and conduct studies answering the specific human health questions.

TABLE 2.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR CONSIDERATION BY ATSDR PROGRAMS

Substance	Priority Human Data Needs
Aldrin/Dieldrin	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to aldrin and dieldrin.
	Candidate for subregistry of exposed persons.
Arsenic	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to arsenic.
Benzene	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to benzene.
Beryllium	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to beryllium.
Cadmium	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to cadmium.
	Evaluation of existing registries of exposed persons.
Carbon Tetrachloride	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to CCl_4.
	Candidate for subregistry of exposed persons.
Chloroethane	Candidate for subregistry of exposed persons.
Chloroform	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to chloroform.
	Candidate for subregistry of exposed persons.
Chromium	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to chromium.
	Candidate for subregistry of exposed persons.
Cyanide	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to cyanide.
	Candidate for subregistry of exposed persons.
p,p'-DDT, DDD, DOE	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to DDT, DDD, and DDE.
	Candidate for subregistry of exposed persons.

TABLE 2.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR CONSIDERATION BY ATSDR PROGRAMS—Continued

Substance	Priority Human Data Needs
Di(2-ethylhexyl)phthalate	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to DEHP.
	Candidate for subregistry of exposed persons.
Lead	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to lead.
	Candidate for subregistry of exposed persons.
Mercury	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to mercury.
	Candidate for subregistry of exposed persons.
Methylene Chloride	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to methylene chloride.
	Candidate for subregistry of exposed persons.
Nickel	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to nickel.
	Candidate for subregistry of exposed persons.
Polychlorinated Biphenyl Compounds	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to PCBs.
	Candidate for subregistry of exposed persons.
Polycyclic Aromatic Hydrocarbons (includes 15 substances).	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to PAHs.
	Candidate for subregistry of exposed persons.
Selenium	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to selenium.
	Candidate for subregistry of exposed persons.
Tetrachloroethylene	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to tetrachloroethylene.
	Candidate for subregistry of exposed persons.
Toluene	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to toluene.
	Candidate for subregistry of exposed persons.
Trichloroethylene	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to trichloroethylene.
Vinyl Chloride	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to vinyl chloride.
	Candidate for subregistry of exposed persons.
Zinc	Exposure levels in humans living near hazardous waste sites and other populations, such as workers exposed to zinc.
	Candidate for subregistry of exposed persons.

Dated: October 9, 1991.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

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Figure 1.
Distillation of ATSDR's Priority Data Needs

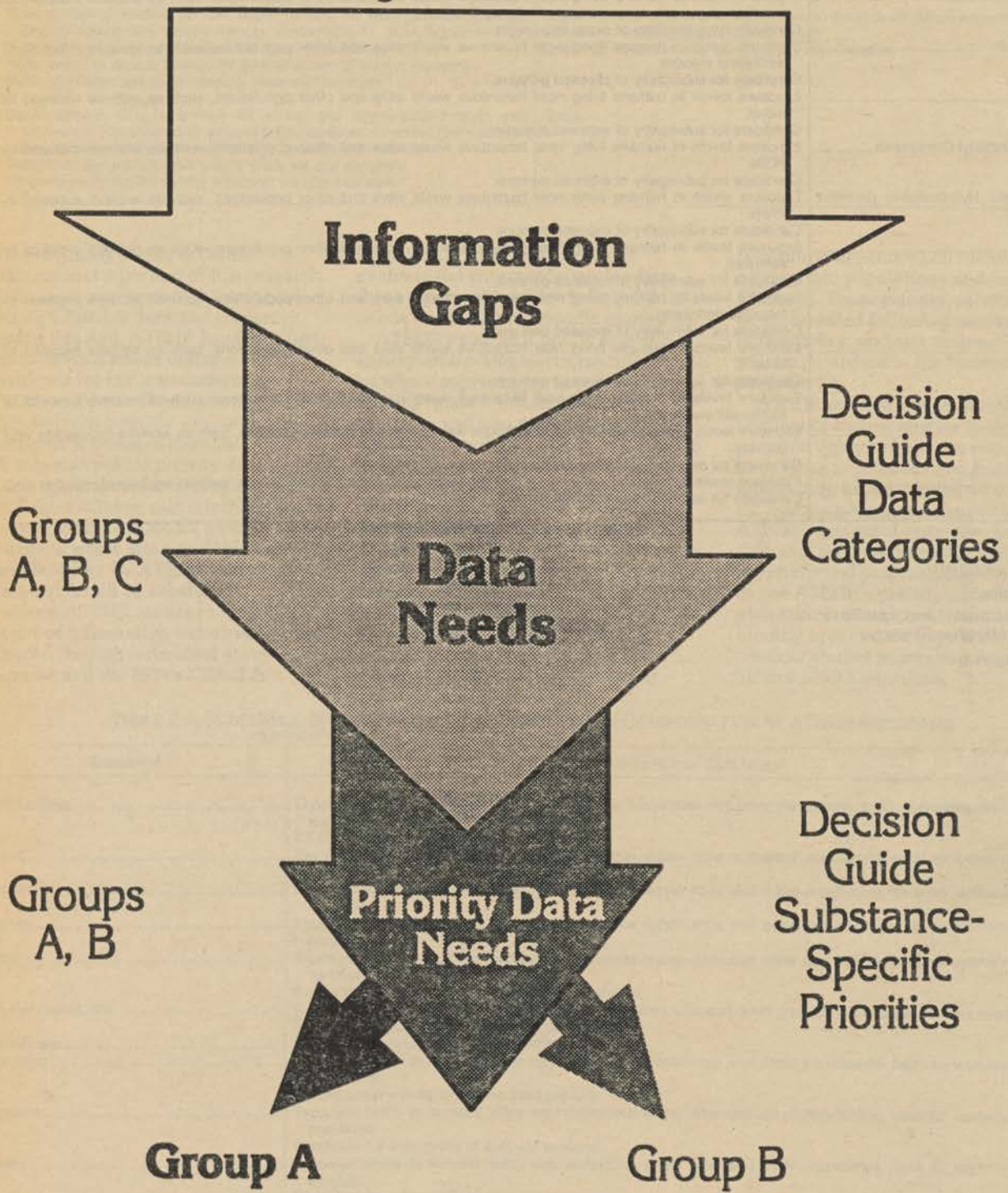
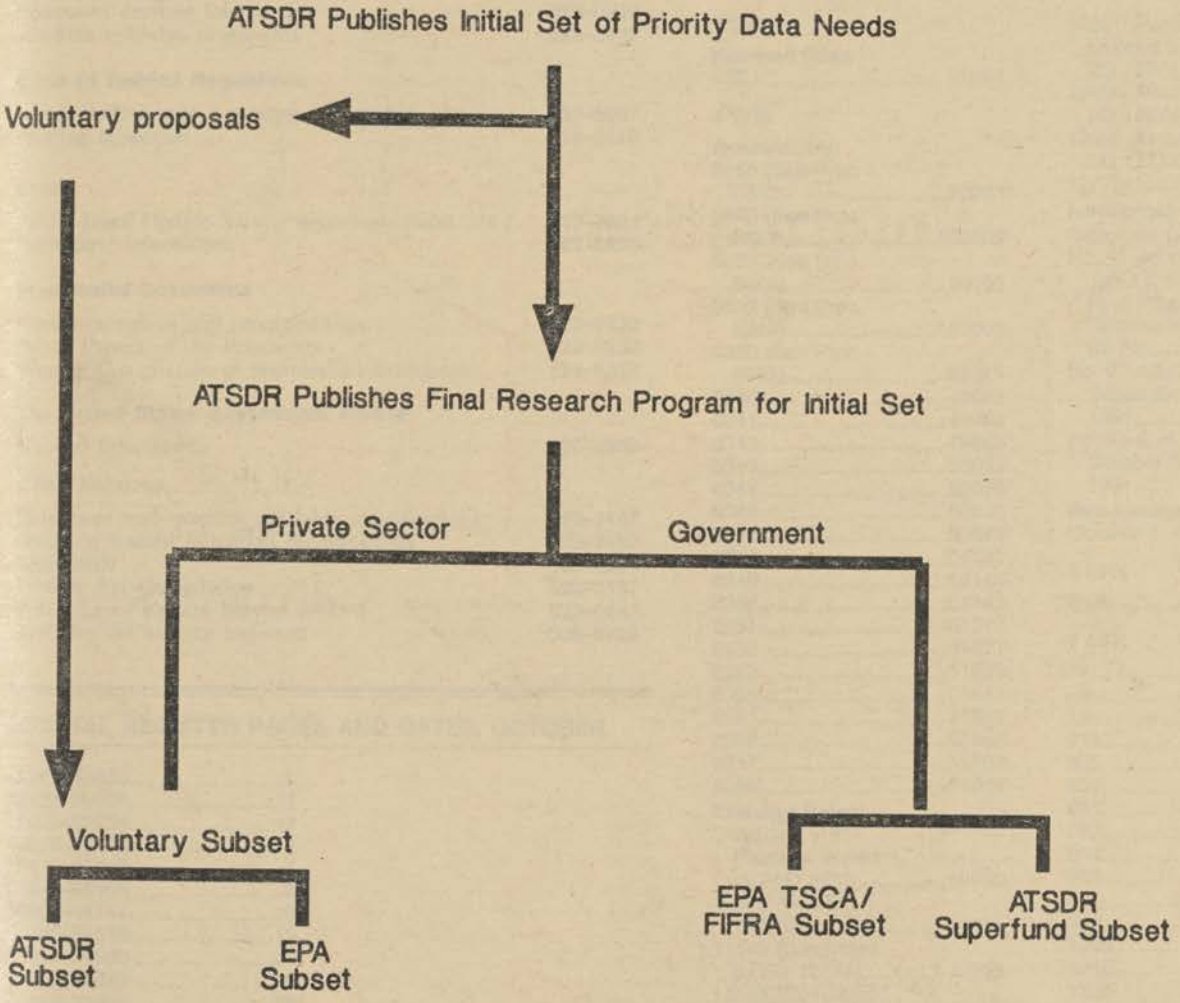
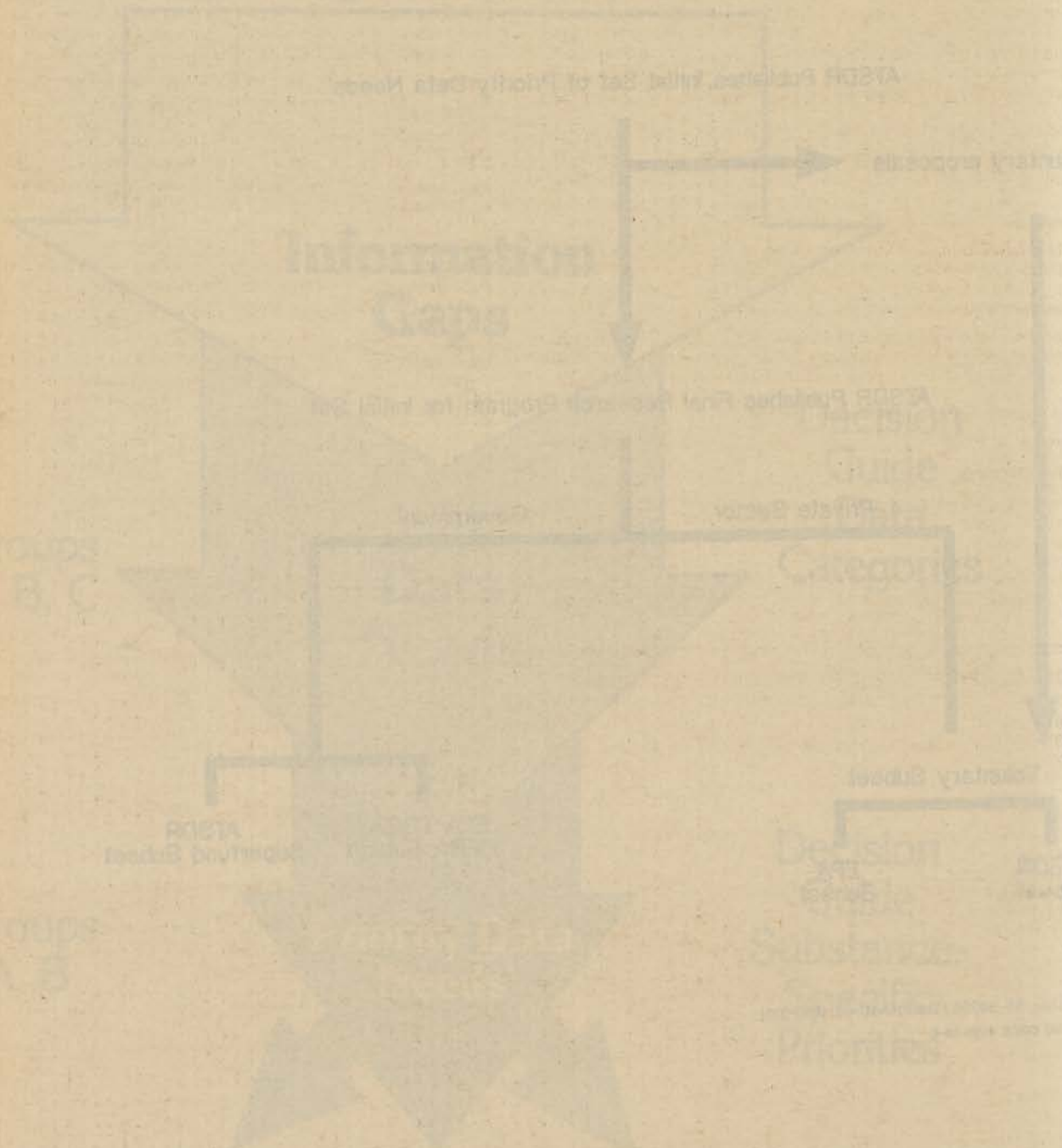


Figure 2.
ATSDR's Initiation of its Superfund Applied Research Program to Fill Priority Data Needs



[FR Doc. 91-24956 Filed 10-16-91; 8:45 am]
BILLING CODE 4160-70-C



Reader Aids

Federal Register

Vol. 56, No. 201

Thursday, October 17, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

245.....49839
299.....49671
392.....49671
499.....49671

9 CFR

53.....51973
72.....51974
112.....51975
Proposed Rules:
91.....52007

10 CFR

2.....51321
13.....49945
15.....51829
16.....51829
Proposed Rules:
32.....51182

12 CFR

202.....51322
208.....51152
213.....51322
225.....51152
226.....51322
338.....50034
1680.....52160
Proposed Rules:
Ch. X.....51854
359.....50529
1620.....50829

13 CFR

121.....49672, 49841

14 CFR

39.....50042, 50048, 50649, 50650, 51156–51162, 51322–51327, 51637–51646
71.....49842–49844, 51166, 51327
91.....51167, 51257, 51618
161.....51257
Proposed Rules:
39.....50294–50301 50678–50682, 51346–51351
71.....49855, 50066, 51352, 51353

15 CFR

19.....51257
771.....51833
774.....51833
1160.....51257
1170.....51257
400.....50790

16 CFR

305.....50812
Proposed Rules:
435.....50419

17 CFR

30.....51650
Proposed Rules:
4.....50067

18 CFR

157.....50235
284.....50235
Proposed Rules:
284.....50072

19 CFR

Proposed Rules:
4.....51168, 51762
10.....49844, 51762
102.....51762
134.....51762
177.....51762

20 CFR

200.....50246
404.....50157
422.....50157

21 CFR

5.....51169
175.....49673
176.....49673
429.....50248
510.....49845, 50652
520.....50652, 50654, 50813
522.....50652, 50814
524.....50652
540.....50652
558.....49846, 50049, 50652, 50655
1220.....50249
Proposed Rules:
211.....51354
314.....51354
333.....50754, 52008
514.....51354

22 CFR

42.....49675–49678, 51170, 51172
43.....49821
Proposed Rules:
41.....49729–49821
312.....50684

23 CFR

1205.....50250

24 CFR

91.....49683
200.....50814
235.....49683
888.....51834
966.....51560
Proposed Rules:
81.....51854
961.....50772

26 CFR

1.....52120
5c.....51175
301.....49684
602.....52120
Proposed Rules:
1.....50754, 50755, 51184, 51258, 52120
301.....50831, 50833, 51258, 51855–51860

28 CFR

2.....51176
51.....51834
68.....50049
Proposed Rules:
11.....49729
16.....50833
32.....50160

29 CFR

96.....50784
102.....50820
541.....50256
2610.....51820
2622.....51820
2644.....51821
2676.....51822
Proposed Rules:
541.....50302

30 CFR

75.....51610
948.....50256
Proposed Rules:
701.....51861
785.....51861
845.....51184
904.....51188
935.....49856
870.....50741

31 CFR

515.....49846

32 CFR

93.....51328
162.....50270
199.....50273
290.....49685
293.....51976
295.....49693
312.....51976
Proposed Rules:
806b.....50303

33 CFR

100.....50655, 51331, 51332, 51980
117.....49705
165.....50274, 51980
330.....51837
Proposed Rules:
Ch. II.....51868

34 CFR

307.....51582
Proposed Rules:
400.....51448
401.....51448
402.....51448
403.....51448
405.....51448
406.....51448
407.....51448
408.....51448
409.....51448
410.....51448
411.....51448
412.....51448
413.....51448
414.....51448
415.....51448
416.....51448
417.....51448
418.....51448
419.....51448
421.....51448
422.....51448
423.....51448
424.....51448
425.....51448
426.....51448
427.....51448
428.....51448
791.....51122

36 CFR

327.....49706
Proposed Rules:
254.....49948

37 CFR

201.....50657

38 CFR

3.....51651
4.....51651
Proposed Rules:
21.....49735, 51663, 51861

39 CFR

111.....51838, 51981

40 CFR

52.....50172, 50659, 51982
136.....50758
180.....51841
186.....51841
257.....50978
258.....50978
271.....51762
272.....51762
281.....51333
Proposed Rules:
Ch. I.....51868
52.....49857, 52008–52011
82.....50693
88.....50196,52013
185.....50190, 50466
228.....49858
261.....51592
271.....51592
302.....51592
764.....49863

41 CFR

302–6.....51177

42 CFR

110.....51798
400.....50058
406.....50058
407.....50058
414.....50821
417.....51984
484.....51334
Proposed Rules:
36.....51189
413.....50834

43 CFR

Public Land Orders:
6831 (Corrected by PLO 6885).....50059
6883.....50058
6884.....49847
6885.....50059
6886.....50661
6887.....50824
6888.....50661
6889.....51177
6890.....51334
6891.....51986
Proposed Rules:
2090.....49962
2200.....49962

44 CFR

65.....51335, 51337
67.....51338
Proposed Rules:
65.....50838, 51358

67.....51362
72.....50838, 51358

45 CFR

402.....49706
1160.....49848, 51842

46 CFR

28.....49822
30.....52122
67.....51653
151.....52122
153.....52122
189.....50754
197.....52122
327.....50274
504.....50662
550.....50824
580.....51987
581.....51987
583.....51987

Proposed Rules:

550.....50841

47 CFR

1.....51178
2.....51178, 51655
69.....51656, 51843
73.....49707, 50277, 50278, 50419, 50827, 50828, 51657–51659, 51844, 51845
74.....50662
76.....49707
78.....50662
87.....51655
97.....51762

Proposed Rules:

69.....51666, 51869
73.....50303, 50304, 50842, 50843, 51667, 51870
90.....49875

48 CFR

509.....51659
552.....51659

Proposed Rules:

246.....50693
252.....50693
503.....50073
552.....50073

49 CFR

71.....51997
171.....49831, 49980
172.....49980
173.....49980, 50664
174.....49980
195.....50665
385.....51342
571.....50666, 51845
639.....51786
1105.....49821
1152.....49821

Proposed Rules:

107.....51294
171.....51294
350.....50305
396.....50305
533.....50694
544.....51871

50 CFR

17.....49850
23.....49708, 50059
204.....50061
216.....50278, 50672
247.....50278
285.....50061
642.....49853
651.....50063
661.....51660–51662
663.....49727, 50063
672.....50157, 50279–50281, 51179, 51848
685.....51849

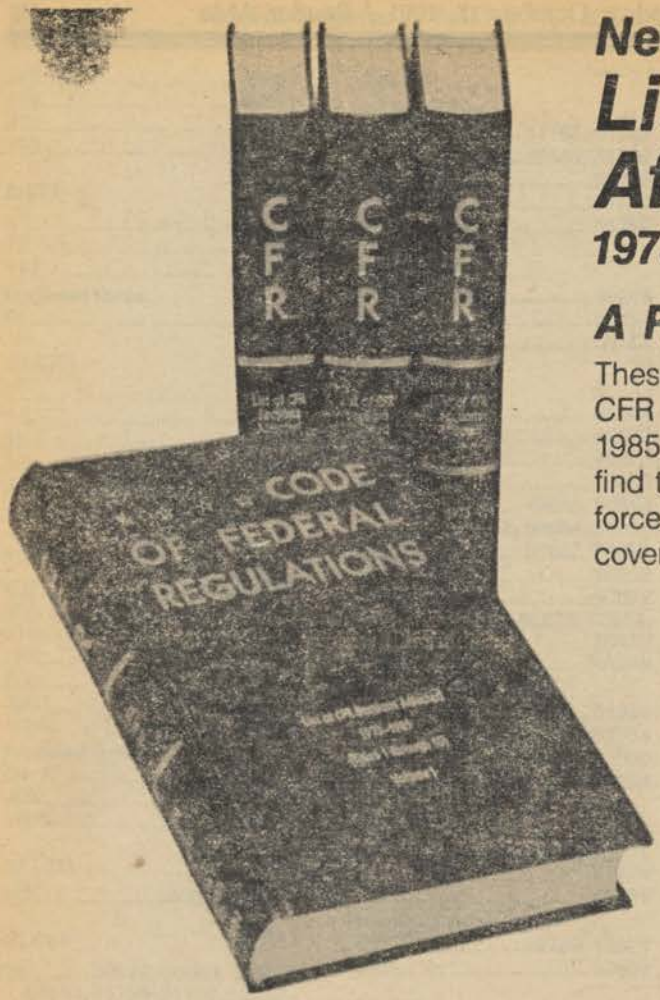
Proposed Rules:

Ch. I.....51868
Ch. IV.....51868
17.....50075, 50701, 51668
80.....50844
251.....50305
611.....50084
630.....51367
641.....51367
652.....51368
658.....50844
663.....50084
649.....51191
672.....51669
675.....51669

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 16, 1991



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1973-1985

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